120

No. 08-1056

In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

MATTHEW HOLM, Warden,
George W. Hill Correctional Facility,
and BARBARA APPLEGATE,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

H. BEATTY CHADWICK
P.O. Box 23
Thornton, PA 19373
610-889-6695

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment requires a jury trial and a standard of proof beyond a reasonable doubt where a material issue of fact will be adjudicated and a serious imprisonment sanction imposed in a contempt proceeding, regardless of the denomination of the contempt as civil or criminal?

2. Whether the Due Process Clause of the Fourteenth Amendment imposes any temporal limitation, even 164 months, upon the length of coercive confinement for civil contempt?

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PETITION FOR WRIT OF CERTIORARI

H. Beatty Chadwick, the Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment entered in the above-entitled case on November 19, 2008 by the Supreme Court of Pennsylvania.

ORDER BELOW

The order of the Supreme Court of Pennsylvania dated November 19, 2008 evidencing the judgment which denied Petitioner's petition for Writ of habeas corpus is attached as Appendix A. The order is presently unpublished.

JURISDICTION

The judgment sought to be reviewed was entered by the Supreme Court of Pennsylvania on November 19, 2008. This Court has jurisdiction by reason of 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

This case involves the provisions of Amendment Fourteen, Section 1, to the United States Constitution:

> All persons born or naturalized in the United States and subject to the jurisdiction of the United States are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, H. Beatty Chadwick, has been confined continuously since April 5, 1995 (now over 164 months) by the Commonwealth of Pennsylvania for noncompliance with a preliminary injunction issued July 22, 1994 in a now concluded divorce action which directed Petitioner to deposit with the Court of Common Pleas of Delaware County the sum of $2,500,000, presumably to be available for distribution in the final decree. (App. 16). Petitioner consistently has maintained that he lacks the funds so as to be able to comply with the preliminary injunction. The state court nevertheless adjudicated Petitioner in contempt on November 2, 1994 and directed his confinement

"until a further hearing is held." (App. 19). Petitioner remains confined pursuant to this order. On October 29, 2004 a final decree was entered in the divorce action. The final decree did not continue the preliminary injunction but included a money judgment against Petitioner for all unpaid sums awarded to his former wife. (App. 25).

Numerous efforts in both state and federal courts to obtain habeas corpus relief were unsuccessful. In 2000 a federal petition was filed on several grounds, including the failure to afford a jury trial on the issue of Petitioner's ability to comply, the lack of evidence to support his ability to comply, and the impermissible length of the confinement. The U.S. District Court for the Eastern District of Pennsylvania granted the writ only on the ground of the excessive length of confinement, then seven years. *Chadwick v. Janecka*, 2002 U.S. Dist. Lexis 10 (E.D. Pa. 2002). Petitioner's former wife, who had intervened, appealed, and the Court of Appeals reversed on the ground that no precedent of this Court permitted habeas relief because of the length of confinement. *Id.* 312 F.3d 597 (3d Cir. 2002). Thereafter, the state Superior Court refused habeas relief on the ground that the confinement was excessive stating that guidance as to the permissible length of contempt confinement must come from the state Supreme Court. *Chadwick v. Caulfield*, 834 A.2d 562, 569 (Pa. Super. 2003). The state Supreme Court denied appeal. *Id.* 853 A.2d 359 (Pa. 2004).

On April 8, 2004 the state court, with the written agreement of the parties, appointed A. Leo Sereni, Esquire, the former president judge of that court, as a Master to determine the facts as to the funds which the state court believed the Petitioner possessed and which Petitioner claimed he did not have. (App. 30-32). After an eighteen month investigation and the assistance of two accounting firms, the Master submitted a report on October 3, 2005 in which he found that Petitioner did not possess or control any substantial monies and concluded that Petitioner was not able to comply with the preliminary injunction. (App. 46-47). The state court rejected the Master's findings and denied relief. (App. 48). The state Superior Court, without explanation, quashed a timely appeal. *Chadwick v. Chadwick*, No. 637 EDA 2006 (Pa. Super. 2007). The state Supreme Court denied appeal. *Id.* 928 A.2d 1288 (Pa. 2007). Petitioner then sought habeas corpus relief on the combined grounds of his present inability to comply with the preliminary injunction and the failure to afford an impartial jury trial of the issue, the extinguishment of the preliminary injunction by the final decree, and the unreasonable and excessive length of Petitioner's confinement. The state court denied the petition (App. 76) and the state Superior Court, again without explanation, quashed a timely appeal. *Chadwick v. Nardolillo*, No. 3284 EDA 2006 (Pa. Super. 2007). The state Supreme Court denied appeal. *Id.* 928 A.2d 1288 (Pa. 2007).

Lacking any means to obtain relief in the lower state courts, on February 29, 2008 Petitioner filed a petition for writ of habeas corpus directly with the state Supreme Court, invoking that court's original jurisdiction. (App. 2-15). The petition sought relief on grounds which included that his right to due process of law was violated by the failure to afford trial by an impartial jury on the issue of his inability to comply with the preliminary injunction, as well as by his excessive confinement which no longer could be considered coercive. (App. 12-13).

In accordance with the applicable rules the petition was accompanied by an application for leave to file the same. The Respondent, Petitioner's custodian, notified the state Supreme Court that no response would be filed. Petitioner's former wife, Barbara Applegate, applied to intervene. On November 19, 2008 the state Supreme Court granted the application for leave to file, denied the petition for writ of habeas corpus and dismissed the application to intervene as moot. Petitioner asks the Court to review the denial of habeas corpus relief by the state Supreme Court.

REASONS FOR GRANTING THE WRIT

I. ADJUDICATION OF A MATERIAL ISSUE OF FACT WHICH UNDERLIES A CONTEMPT DETERMINATION BY A COURT AGGRIEVED THEREBY PRESENTS A SUBSTANTIAL RISK THAT THE ADJUDICATION WAS NOT IMPARTIAL, SO THAT THE COURT SHOULD CONSIDER EXTENDING THE RIGHT TO JURY TRIAL AND OTHER CRIMINAL LAW PROTECTIONS TO ALL INDIRECT CONTEMPTS, WHETHER CIVIL OR CRIMINAL.

Although a jury trial and other criminal law rights have not traditionally been afforded in cases of civil contempt, the same due process considerations which caused such rights to be available in criminal contempt apply with equal force in civil contempt cases where the adjudication depends on a material issue of fact and a serious sanction is imposed. Petitioner consistently has maintained that he lacked the funds to comply with a preliminary injunction which directed him to deposit $2.5 million with the state court. The evidence that he had the ability to comply was weak and was based principally on the same court's disbelief of Petitioner. (App. 35). The constitutionality of his confinement depended on Petitioner's ability to comply. If he did not have such ability, he was entitled to be released. *Maggio v. Zeitz*, 333 U.S. 56, 74 (1948). Even after a state court appointed Master confirmed that Petitioner lacked the funds so as to be able to comply, (App. 46-47), the state court

still refused to terminate Petitioner's confinement[1] The state court was simply unwilling to accept that the Master could have contradicted the state court's earlier determination. (App. 72-73).

The state court was hardly an impartial tribunal. The court that imposed and continued Petitioner's confinement was the same court which adjudicated the preliminary injunction and Petitioner's contempt. As this court has noted,

> "Contemptuous conduct, through a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of the court." *Bloom v. State of Illinois*, 391 U.S. 194, 202 (1968).

Thus, in *Bloom*, the Court held that a jury trial and criminal law protections must be afforded in cases of criminal contempt. The Court declared:

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[1] In rejecting the Master's findings the state court failed to adhere to this Court's rule that the findings had the status of a special jury verdict and were conclusive. The Master was appointed with agreement of the parties and the findings were supported by evidence. *Davis v. Schwartz*, 155 U.S. 631, 636-37 (1895).

> "There is no substantial difference between serious contempts and other serious crimes. Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power." *Id.*

These considerations also apply to civil contempt cases where the contempt is based upon a material issue of fact such as the ability to comply, which is the significant issue in Petitioner's case.

The process due in contempt cases has evolved in recent years. Traditionally there was no constitutional right to a jury trial in any contempt proceeding, *Green v. United States*, 356 U.S. 165, 183 (1958). Ten years later, in *Bloom*, the right was afforded in cases of criminal contempt. The last occasion on which the Court directly considered the issue of due process in contempt cases was *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994). At issue there was a $52 million conditional fine imposed on the mine workers union if a labor injunction was violated. The Court held that the fine, although characterized by the state court as a civil contempt, was in the nature of a criminal contempt, and that therefore a jury trial and other criminal protections were constitutionally required. *Id.* at 838. Although it acknowledged the civil/criminal contempt distinction the decision found a way to extend criminal due process rights. The Court's rationale, however, was not clear.

First, the *United Mine Workers* decision reasoned that an impartial fact finder was required for a "discrete category" of contempts which involved claims of disobedience to complex injunctions since "elaborate and reliable fact finding" would be required. *Id.* at 833-34. The decision also concluded that criminal law protections were necessary because of the seriousness of the sanction imposed: "Under such circumstances," the Court stated, "disinterested fact finding and even handed adjudication were essential, and petitioners were entitled to a criminal jury trial." *Id.* at 837-38. Under this latter rationale, however, a jury trial should be afforded as to material fact issues if a serious sanction is imposed, even where there was no complex injunction and regardless of whether the contempt was civil or criminal. No lower court decision has been discovered where this practice has been adopted.

The lower courts have read *United Mine Workers* either to require a jury trial only where contempt of a complex injunction was involved or to require a jury trial only in a case classified as a criminal contempt. In the former category, which required a jury only if a complex injunction was involved, were *Jake's Ltd. v. City of Coates*, 356 F.3d 896, 903 (8th Cir. 2004); *FTC v. Kuykendall*, 312 F.3d 1329, 1342 (10th Cir. 2002), and *N.O.W. v. Operation Rescue*, 37 F.3d 646, 660 (D.C. Cir. 1994). Other lower court decisions focused upon the categorization of the sanction in *United Mine Workers* as "criminal," *Id.* 512 U.S. at 838, and concluded that the decision did not require a jury

trial in civil contempt cases: *United States v. Santee Sioux Tribe of Nebraska*, 254 F.3d 728, 736 (8th Cir. 2001); *American Airlines, Inc. v. Allied Pilots Association*, 228 F.2d 574, 583 (5th Cir. 2000); *United States v. Ayers*, 166 F.3d 991, 995 (9th Cir. 1999); *New York State N.O.W. v. Terry*, 159 F.3d 86, 93-94 (2d Cir. 1998); and *Harris v. City of Philadelphia*, 47 F.3d 1311, 1329 (3d Cir. 1995).

Indeed, *United Mine Workers*, by its use of the civil/criminal contempt analysis appeared to require criminal procedural protections only in cases of complex injunctions. Said the Court: "Indirect contempts involving discrete readily ascertainable acts, such as turning over a key or payment of a judgment properly may be adjudicated through civil proceedings since the need for extensive impartial fact finding is less pressing." *Id.* 512 U.S. at 833. This analysis, however, looked only at the acts directed to be done. It did not consider whether there is an ability to perform the acts or whether the acts have been properly performed. If the contemnor is not able to perform the acts directed, as is the case with the Petitioner, the need for impartial fact finding on the issue of ability to comply is every bit as pressing as in the case of a complex injunction.

The historical basis for denying criminal procedural protections in civil contempt is that the contemnor can end his confinement by compliance. The civil contemnor is said to "[carry] the keys of his prison in his own pocket." *Gompers v. Bucks Stove and Range Co.*, 221 U.S. 418, 442 (1911). The

Gompers decision concluded that a twelve month sentence imposed on Samuel Gompers for violating an anti-boycott injunction was a criminal penalty, not a civil one as Gompers was "furnished no key." *Id.* Where a contemnor has the ability to comply with the underlying order, however, a jury trial and criminal procedural rights are not afforded. *Shillitani v. United States*, 384 U.S. 364, 371 (1966). Significantly, the Court held in *Shillitani* that there was no ability to comply with an order to testify once the grand jury had dissolved and that the contemnor in that case must be released. As the Court in *United Mine Workers* observed, scholars have criticized the "keys to the prison" rationale and the consequent assignment of due process rights based upon the labeling of contempts as civil or criminal. *Id.* 512 U.S. at 827, n. 3, 793 and 845. The factual issue of a contemnor's ability to comply or not, as the case may be, is decided by the court which adjudicates the contempt. If the contemnor fails to convince that aggrieved court of his inability to comply, he clearly lacks the keys to the prison and could be confined indefinitely. See Dudley, Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempt 79 Va. L. Rev. 1025, 1063 (1993). That indeed has been the experience of the Petitioner in this case.

The Court is urged to revisit the matter of due process rights in contempt cases. Clarification of the law set forth in *United Mine Workers* would avoid some of the confusion surrounding that decision. *United Mine Workers*, however, did not involve

confinement of the contemnor. Where confinement is concerned, it is submitted that due process rights are not properly safeguarded by determining the process that is due simply by classifying the contempt as civil or criminal. Regardless of those classifications, the process that should be afforded should depend, as the *United Mine Workers* reasoning implied, on whether a material issue of fact is to be decided and the seriousness of the sanction proposed to be imposed.

II. LENGTHY COERCIVE CIVIL CONTEMPT CONFINEMENT SUCH AS THE 164 MONTHS IN THIS CASE RAISES DUE PROCESS CONCERNS AND SUGGESTS THAT THE COURT SHOULD ESTABLISH GUIDELINES FOR THE LOWER COURTS.

Just as the court which adjudicates contempt suffers from a lack of impartiality as to the proof of facts concerning a contemnor's ability to comply, a similar disability arises in determining when a confinement sanction ceases to serve a coercive purpose. The state court which has imprisoned Petitioner now for over 164 months has maintained that its coercive purpose will not end and that it may imprison him for life. (App. 77). It is extraordinarily difficult for an aggrieved court to admit that its contempt sanction no longer serves a coercive purpose and should be terminated.

Civil contempt confinement must have a coercive and not a punitive purpose and when it ceases to be coercive it cannot be maintained absent criminal law

protections. *Gompers*, 221 U.S. at 442. However, as the Third Circuit has recognized, "The point at which coercive imprisonment actually ceases to be coercive and essentially becomes punitive is not readily discernible." *In re: Grand Jury Investigation (Braun)* 600 F.2d 420, 425 (3d Cir. 1979). The Court has allowed broad discretion. Dicta in the court's opinion in *United Mine Workers* (which did not involve confinement) set forth the principle: "The paradigmatic coercive civil contempt sanction as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command." *United Mine Workers*, 572 U.S. at 828. Although it is doubtful that the Court intended "indefinitely" to mean "without further recourse" such a meaning has been applied in Petitioner's case. Civil contempt is virtually the only circumstance where the adjudicating court has such unbridled discretion to impose lengthy confinement.

Although the Court has not established guidelines for contempt confinement, it has indicated that there are reasonable limits. In *Green*, the court warned that "district courts have a special duty to exercise such an extraordinary power with the utmost sense of responsibility and circumspection." *Id.* 358 U.S. at 188. The Court also has made clear that the "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), (concerning the civil commitment of the mentally ill). In

Maggio the court indicated that extensive indefinite contempt confinement was unacceptable. The Court there considered the case of a bankrupt jailed for noncompliance with a turnover order as to which he claimed an inability to comply.

> "It is everywhere admitted that he will not be held in jail indefinitely if he does not comply. His denial of possession is given credit after demonstration that a period in prison does not produce the goods." *Id.* 333 U.S. at 76.

After a reasonable interval of time in jail has failed to produce compliance an inability to comply is presumed. The *Maggio* opinion discussed the point:

> "I have known a brief confinement to produce the money promptly, thus justifying the court's incredulity, and I have also known it to fail. Where it has failed, and where a reasonable interval of time has supplied the previous defect in the evidence, and has made sufficiently certain what was doubtful before, namely the bankrupt's inability to obey the order, he has always been released, and I need hardly say that he would always have the right to be released . . . " *Id.* 333 U.S. at 72 quoting from *Oriel v. Russell*, 278 U.S. 358, 365 (1929).

A number of lower courts have recognized the principle that when there is no reasonable likelihood that confinement for civil contempt will compel compliance the confinement has lost its coercive force

and must be terminated: *Lambert v. Montana*, 545 F.2d 89-91 (9th Cir. 1976); *In re: Grand Jury Investigation*, 600 F.2d at 424; *Soobzokov v. CBS Inc.*, 642 F.2d 28, 31 (2d Cir. 1981); *Simkin v. United States*, 715 F.2d 34, 37 (2d Cir. 1983); *United States ex rel. Thom v. Jenkins*, 760 F.2d 736, 740 (7th Cir. 1985); *United States v. Lippitt*, 180 F.3d 873, 876-79 (7th Cir. 1999); *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1530 (11th Cir. 1992). Deference, however, generally has been given to the court which imposed the sanction to determine when the sanction has ceased to be coercive. "The determination whether a civil contempt sanction has lost its coercive effect rests within the sound discretion of the district court." *In the Matter of Credidio*, 759 F.2d 589, 591 (7th Cir. 1985), a decision which prompted a dissent from Judge Posner, who noted that "putting a person in prison for up to 18 months [under the Recalcitrant Witness Act] . . . without a full trial and with none of the safeguards of the criminal process . . . is an anomaly in our system." *Id.* at 594. The determination is "virtually unreviewable." *Simkin*, 715 F.2d at 38. Nevertheless, these decisions declare that confinement of a civil contemnor "cannot last forever." *Thom*, 760 F.2d at 740 ("If after many months or perhaps even several years, the district judge becomes convinced that, although Thom is able to pay he steadfastly refuses to yield to the coercion of an incarceration, the judge would be obligated to release Thom."); *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d at 1530-31 (same). Deference to the judgment of the court that imposed the sanction initially,

however, allows the aggrieved party to make the decision. To the aggrieved party frequently there is no point at which confinement ceases to be coercive.

A recent Second Circuit decision which upheld the continuation of a seven year civil contempt confinement prompted a criticism from one panel member who wrote that the eighteen month maximum contempt sanction contained in the Recalcitrant Witness Act, 18 U.S.C. § 1826, should be a "presumptive benchmark for all civil contempt incarcerations." *Armstrong v. Guccione*, 470 F.2d 89, 113 (2d Cir. 2006), (concurring opinion of Sotomayor, J.). The Third Circuit, although it denied early release to a recalcitrant witness, nevertheless suggested that the statutory eighteen month maximum could have a wider application. That court noted that the eighteen month limit assisted in resolving the "often perplexing task of determining whether the confinement has essentially become punitive" as it "reflects a deliberate Congressional attempt to resolve the problem of drawing a line between coercive and punitive." *In re: Grand Jury Investigation*, 600 F.2d at 425. Significantly, that line was drawn in a fact situation involving the refusal to testify where there is no likelihood of a mistake as to whether the contemnor had the ability to comply.

The Court has enunciated guidelines for other types of civil commitment. It has noted that analogous statutory limits, such as the punishment for criminal contempt, could provide a "useful benchmark" for determining the permissible length of civil

commitment. *McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 250 (1972). When confronted with the issue of how long an alien awaiting deportation could be civilly confined beyond a ninety day statutory removal period, the Court constructed a six month limitation, reasoning, in part, that "Congress [which earlier had reduced the initial removal period from six months to ninety days] previously doubted the constitutionality of detention for more than six months." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Without guidelines from the Court, where the sanctioning tribunal also has full discretion to determine the penalty fairness is certainly in question. Justice Scalia has warned, "that one and the same person should be able to make the rule, to adjudicate its violation, and to assess its penalty is out of accord with our usual motions of fairness and separation of powers." *United Mine Workers*, 512 U.S. at 840, (concurring opinion). In order to assure the application of due process the Court is urged to review the guidance to lower courts so as to establish reasonable limits for civil contempt confinement.

CONCLUSION

The due process implications of the failure to afford a trial before an impartial fact finder and the unlimited confinement imposed in civil contempt are significant, particularly to Petitioner, who has been confined for over 164 months notwithstanding his inability to perform the act required of him. For the reasons set forth above the Petitioner respectfully prays that the Court review these issues and that a Writ of Certiorari be granted.

Respectfully submitted,

H. BEATTY CHADWICK
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Thornton, PA 19373
610-889-6695

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

H. BEATTY CHADWICK, Petitioner	:	No. 55 MM 2008
v.	:	
MATTHEW HOLM, WARDEN, GEORGE W. HILL CORRECTIONAL FACILITY, Respondent	:	

ORDER

PER CURIAM

AND NOW, this 19th day of November, 2008, the Application for Leave to File Original Process is **GRANTED**, the Petition for Writ of Habeas Corpus and the Application for an Immediate Hearing are **DENIED**, and the Application for Leave to Intervene is **DISMISSED AS MOOT**.

TRUE AND CORRECT COPY
ATTEST: November 19, 2008

/s/ Elaine Hellen
Elaine Hellen,
Assistant Chief Clerk

APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA

H. BEATTY CHADWICK,	)	
Petitioner	)	
	)	
v.	)	**No. M.D. Misc. 2008**
MATTHEW HOLM, Warden,	)	
George W. Hill	)	
Correctional Facility,	)	
	)	
Respondent	)	

APPLICATION FOR LEAVE TO FILE ORIGINAL PROCESS

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA

H. Beatty Chadwick, Petitioner, by and through his undersigned counsel, requests leave pursuant to Pa. R.A.P. 3307, to file original process in the Court, requests the Court to invoke its original jurisdiction pursuant to 42 Pa. C.S. § 721, and represents:

1. This matter seeks a Writ of habeas corpus directed to Matthew Holm, Warden of the George W. Hill Correctional Facility, the Delaware County Prison, where Petitioner has been confined for over 153 months for civil contempt in a divorce action concluded in October, 2004. Petitioner has a clear legal right to release from confinement which the Court of Common Pleas of Delaware County has refused to grant.

2. This matter cannot properly be brought in another court having concurrent jurisdiction because the Court of Common Pleas of Delaware County is an interested party sitting in judgment on its own prior actions and is unable or unwilling to adjudicate the issues impartially, having on multiple occasions refused to release Petitioner from confinement despite Petitioner's clear right thereto. Moreover, the Superior Court has refused to provide judicial review three times, as more fully set forth in the attached petition for Writ of habeas corpus.

3. This is a matter involving significant legal issues including:

a) whether a trial court may properly ignore the factual findings of its own appointed master simply because these findings conflict with prior factual determinations of the court; and

b) whether civil contempt confinement in excess of 153 months can reasonably serve a coercive purpose; and

c) whether civil contempt confinement in excess of 153 months without affording a jury trial violates Petitioner's right to due process of law; and

d) whether confinement for failure to pay a money judgment may lawfully be imposed under the guise of civil contempt.

4. Immediate and final disposition of this matter is essential because Petitioner is over 71 years

of age, suffers from and is being treated for non-Hodgkins lymphoma, and whose health is materially adversely affected by prison living conditions. Since Petitioner is unable to obtain relief from any lower court Petitioner remains in prison unless and until this Court grants habeas corpus relief.

WHEREFORE, Petitioner respectfully requests the Court to accept the accompanying petition for review, exercise its original jurisdiction, hear this matter and grant Petitioner the relief requested and such other relief as the Court finds just under the circumstances.

Respectfully submitted,

/s/ Michael J. Malloy
Michael J. Malloy
Attorney for Petitioner
10 Veterans Square
Media, PA 19063
Telephone: 610-565-9145

IN THE SUPREME COURT OF PENNSYLVANIA

H. BEATTY CHADWICK,	)	
Petitioner	)	
	)	**No. M.D. Misc. 2008**
v.	)	
MATTHEW HOLM, Warden,	)	
George W. Hill	)	
Correctional Facility,	)	
	)	
Respondent	)	

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Petitioner, H. Beatty Chadwick, by and through his undersigned counsel, requests the Court to issue a Writ of habeas corpus and represents:

1. The Respondent is Matthew Holm, Warden of the George W. Hill Correctional Facility, the Delaware County Prison, Thornton, PA, who has custody of Petitioner.

FACTUAL BACKGROUND

2. On July 22, 1994, in a divorce action captioned Barbara Jean Crowther Chadwick v. H. Beatty Chadwick, No. 92-19535, the Court of Common Pleas of Delaware County (herein the "Court of Common Pleas") issued a preliminary injunction which, in

material part, directed the defendant, the Petitioner herein, to deposit, within twenty-four hours, the sum of $ 2,500,000 in a court administered account. A copy is attached as Exhibit A.

3. Petitioner advised the Court of Common Pleas that he did not possess nor could he obtain the sum that he was ordered to deposit and was not able to comply with the preliminary injunction with respect thereto.

4. Nevertheless, on November 2, 1994 the Court of Common Pleas adjudicated Petitioner in contempt of the preliminary injunction and directed that he be confined "until a further hearing is held". A copy of the order is attached as Exhibit B.

5. Petitioner has been confined continuously since April 5, 1995 pursuant to the November 2, 1994 order.

6. Over a several year period commencing in June 1995 the Court of Common Pleas denied a number of petitions for Writ of habeas corpus filed by Petitioner to obtain his release.

7. On February 8, 2000, the Court denied without opinion Petitioner's petition for Writ of habeas corpus brought under the Court's original jurisdiction. *Chadwick v. Goldberg,* 223 M.D. Misc. 1999 (Pa. 2000).

8. The Superior Court on September 8, 2003 declined to grant relief to Petitioner on the ground that his confinement by reason of its extent had

ceased to be coercive without guidance from this Court. *Chadwick v. Caulfield,* 834 A. 2d 562, 569 (Pa. Super. 2003). This court denied appeal. 853 A. 2d 359 (Pa. 2004).

FINAL DIVORCE DECREE

9. On October 29, 2004 the Court of Common Pleas issued a final decree in the divorce action. A copy is attached as Exhibit C.

10. The final divorce decree did not continue the preliminary injunction.

11. The final divorce decree (Paragraph 14) contained a money judgment against Petitioner for all unpaid sums awarded to the divorce action plaintiff in such action.

12. The Court of Common Pleas on May 16, 2005 denied Petitioner's petition for release based upon the extinguishment of the preliminary injunction, its replacement by a money judgment in the final decree, and the six month statutory limit on contempt confinement in the domestic relations code. The order is attached as Exhibit D.

13. The Superior Court, without giving any reasons, quashed the timely appeal of the order of May 16, 2005. *Chadwick v. Chadwick,* No. 1384 EDA 2005 (Pa. Super. 2005). This Court denied appeal of the quashal order, 902 A. 2d 1238 (Pa. 2006).

FINDINGS OF MASTER

14. In order to determine whether Petitioner presently possessed the funds the preliminary injunction directed him to deposit, the Court of Common Pleas, with the written agreement of the parties to the divorce action, on April 8, 2004, appointed A. Leo Sereni, Esquire, that court's former President Judge, as a Master to determine "any and all information" concerning such funds. The order of appointment and agreement are attached as Exhibit E.

15. The Master conducted an eighteen-month investigation, and, with the consent of the parties, engaged the services of, and received reports from, two accounting firms, Parente Randolph of Philadelphia, Pa., and Intelysis Corp. of Toronto, Ontario. Parente Randolph is a well recognized certified public accounting and auditing firm which also provides specialized forensic accounting and auditing services. Glenn Newman, the partner of the firm who assisted the Master, is a certified public accountant and certified fraud examiner and has served as a member of the forensic and litigation subcommittee of the A.I.C.P.A. Intelysis is a forensic accounting firm with extensive experience in pursuing assets concealed in foreign jurisdictions.

16. On October 3, 2005 the Master submitted a report in which he found that Petitioner did not possess or control any substantial monies and concluded that Petitioner was not able to comply with

the preliminary injunction. A copy of the report is attached as Exhibit F (see pages 7-8).

17. The report of the Master (Exhibit F, page 2) noted that prior fact determinations by the Court of Common Pleas to the contrary appeared to have been based principally upon disbelief of Petitioner, a ground this Court in *Barrett v. Barrett*, 368 A. 2d 616, 622-23 (Pa. 1977) had found insufficient to support the sanction of imprisonment.

18. The Court of Common Pleas, however, refused to terminate Petitioner's confinement based upon the Master's findings, which the Court rejected principally because the findings were contrary to prior findings made by the Court of Common Pleas. The order of the Court of Common Pleas dated February 22, 2006 is attached as Exhibit G.

19. No evidence was presented to the Court of Common Pleas to demonstrate, contrary to the Master's findings, that Petitioner possessed or controlled monies so as to have the ability to comply with the preliminary injunction.

20. The Court of Common Pleas made no factual findings to support its conclusion as to Petitioner's present ability to comply.

21. Two of the judges of the Court of Common Pleas who issued the February 22, 2006 order of that court, the Honorable Kenneth Clouse and the Honorable Chad Kenney, had made findings in prior

proceedings which were in conflict with the findings of the Master.

22. The Superior Court, without giving any reasons, quashed the timely appeal of the order of February 22, 2006. *Chadwick v. Chadwick,* No. 637 EDA 2006 (Pa. Super. 2007). This Court denied an appeal from the quashal order. 928 A. 2d 1288 (Pa. 2007).

23. On November 20, 2006 the Court of Common Pleas denied habeas corpus relief to the Petitioner sought on the combined grounds of his present inability to comply; the extinguishment of the preliminary injunction; confinement in excess of the statutory limit in the Domestic Relations Code; and unreasonable and excessive length. A copy of the order is attached as Exhibit H.

24. Again, no evidence as to assets possessed or controlled by the Petitioner was presented to the Court of Common Pleas.

25. The Superior Court, again without giving any reasons, quashed the timely appeal of the November 20, 2006 order. *Chadwick v. Nardolillo,* No 3284 EDA 2006. (Pa. Super. 2007). This Court denied an appeal from the quashal order. 928 A. 2d 1288 (Pa. 2007).

26. Petitioner then filed a new habeas corpus petition and requested the Court of Common Pleas to arrange for the petition to be assigned to a judge from a different judicial district, since the Court of

Common Pleas effectively was sitting in judgment on its own prior orders and was unable to impartially adjudicate Petitioner's claim of inability to comply with the preliminary injunction, as well as Petitioner's other grounds for relief.

27. On January 14, 2008 the Court of Common Pleas denied Petitioner's request for the appointment of an independent judge, and denied his habeas corpus petition, again affirming that it believed, based on its prior determinations, that Petitioner had the ability to comply, and refusing to recognize the existence and conclusive nature of the Master's findings. A copy of the findings and order of the Court of Common Pleas is attached as Exhibit I.

28. As in previous proceedings, no evidence was presented to the Court of Common Pleas as to assets possessed or controlled by the Petitioner.

29. The Court of Common Pleas also asserted that the law permitted it to confine Petitioner for the indefinite future, even for life.

30. Again, Judge Clouse and Judge Kenney of the Court of Common Pleas who had made findings prior to the Master's findings and who had rejected the Master's findings on that basis participated in the proceeding which issued the order of January 14, 2008.

REASONS FOR RELIEF

31. This Court should grant Petitioner a Writ of habeas corpus for each of the following reasons:

a) The findings of the Master conclusively established that Petitioner does not have the present ability to comply with the preliminary injunction. *Davis v. Schwartz,* 155 U.S. 631, 636-7 (1895) (The findings of a master appointed with the consent of the parties has the status of a special jury verdict and are conclusive). See also *Stewart v. Metropolitan Life Insurance Co.,* 30 A. 2d 314, 315 (Pa. 1943). (Referee's finding of fact when supported by evidence must be accepted as true).

b) Petitioner's confinement in excess of 153 months without a trial by an impartial jury on the critical fact issue of ability to comply with the preliminary injunction is a violation of the due process clause of the Fourteenth Amendment. (See *United Mine Workers v. Bagwell,* 512 U.S. 821, 840 (1994), holding that serious contempt sanction should not be imposed unless a jury trial on fact issues is afforded.)

c) Petitioner's confinement is based upon a preliminary injunction which no longer exists. The preliminary injunction upon which Petitioner's confinement for contempt was based was extinguished by the final decree in the divorce action. *Den-Tal-Ez v. Siemans Capital Corp.,* 566 A. 2d 1214, 1217 (Pa. Super. 1989); *Nolu Plastics Inc. v. Valu Engineering, Inc.,* 2005 U.S. Dist. Lexis 4530 *18 (E.D. Pa. 2005)

(A preliminary injunction is extinguished by a final decree.)

d) Petitioner's confinement is for the impermissible purpose of coercing the payment of a money judgment. The final decree in the divorce action conclusively adjudicated all issues involved therein, *Commonwealth ex. rel. McVay v. McVay,* 118 A. 2d 144, 146 (Pa. 1955) and granted the divorce plaintiff a money judgment in satisfaction of all monies awarded to her. A money judgment is not enforceable by imprisonment of the judgment debtor. Pa. R.C.P. 3102; *Wilson v. Wilson,* 21 A. 809 (Pa. 1891); *Brodsky v. Philadelphia Athletic Club,* 419 A. 2d 1285, 1288 (Pa. Super. 1980).

e) Petitioner's confinement exceeds the six month limit authorized by the Domestic Relations Code in divorce matters. 23 Pa. C.S. § 3502(c).

f) Petitioner's confinement of more than 153 months far exceeds any period which reasonably could be considered coercive and has become inpermissibly punitive. *Oriel v. Russell,* 278 U.S. 358, 365 (1929) (A reasonable period of confinement allows the inference of inability to comply); *Maggio v. Zeitz,* 333 U.S. 56, 76 (cannot imprison indefinitely for noncompliance); *In Re: Grand Jury Investigation,* 660 F. 2d 420, 434 (3d Cir. 1979) (same). And see *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001) (confinement without affording criminal protection is strictly limited and requires special justification).

32. Petitioner is unable to obtain relief in a lower court with concurrent jurisdiction for the following reasons:

a) The Court of Common Pleas is an interested and injured party in the underlying civil contempt proceedings and therefore has been unable to act as an impartial adjudicator in this case. See *United Mine Workers v. Bagwell,* 521 U.S. 821, 831 (1994) (Contempt "strikes at the most vulnerable and human qualities of a judge's temperament" and brings forth "the prospect of the most tyrannical licentiousness").

b) Thus, the Court of Common Pleas repeatedly has been unable or unwilling to reconsider its factual conclusions made years before the report of the Master to determine whether Petitioner has the present ability to comply with the preliminary injunction as to which he has been held in contempt.

c) Thus, the Court of Common Pleas simply ignored the conclusiveness of the findings of its own appointed Master when those findings conflicted with that court's views, contrary to the rule set forth in *Davis v. Schwartz,* 155 U.S. 631, 636-7 (1895).

d) Moreover, the Court of Common Pleas, because of its unwillingness to reconsider its prior factual determinations even in the face of conclusive evidence to the contrary, also has been unwilling to consider impartially and objectively other grounds for relief presented by the Petitioner.

e) Furthermore, the Superior Court in three separate appeals has refused to provide any judicial review, which ordinarily should be the means to correct the errors and frailties in the Court of Common Pleas.

f) As a consequence, Petitioner lacks any effective remedy to challenge his confinement and without consideration by the Court Petitioner appears condemned to suffer permanent imprisonment.

WHEREFORE, this Honorable Court is requested to issue a Writ of habeas corpus and discharge Petitioner from custody, and to grant such other and further relief as the Court finds just under the circumstances.

Respectfully submitted,

/s/ Michael J. Malloy

Michael J. Malloy
Attorney for Petitioner
Attorney No. 24446
10 Veterans Square
Media, PA 19063
Telephone: 610-565-9145

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY; PENNSYLVANIA CIVIL ACTION – LAW

BARBARA CROWTHER CHADWICK	
Plaintiff,	**No. 92-19535**
v.	**In Divorce**
H. BEATTY CHADWICK,	**Attorneys Nos. 04774/35386/63126**
Defendant.	

ORDER

AND NOW, this 22nd day of July 1994, upon consideration of Wife's Emergency Omnibus Petition For Special Relief, it is hereby ORDERED and DECREED that:

1. Within twenty-four (24) hours of the entry of this Order, H. Beatty Chadwick is directed to return the $2.5 million that he transferred out of the United States in February, 1993, to an account under the jurisdiction of this court, to be held in escrow by counsel for Barbara Jean Crowther Chadwick and counsel for H. Beatty Chadwick pending further Order of the Court.

2. Husband is enjoined from further assigning, concealing, secreting or dissipating marital assets;

3. The marital home located at 280 Roberts Road, Bryn Mawr, Pennsylvania, shall immediately be listed for sale by a court-appointed third party;

4. Husband is directed to pay, forthwith on account of Wife's counsel fees and costs the amount of $75,000.00;

5. Husband is directed to surrender his passport to this Court pending further Order of the Court;

6. Husband is enjoined from leaving the jurisdiction of this Commonwealth until further Order of Court.

7. This matter including a transcript of the testimony shall be referred to the Delaware County District Attorney's Office and to the U.S. Attorney for a consideration of possible or of criminal charges.

BY THE COURT:

/s/ Joseph Labrum
J.

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA CROWTHER CHADWICK	)	
Plaintiff,	)	**No. 92-19535**
v.	)	**In Divorce**
H. BEATTY CHADWICK,	)	
Defendant.	)	

ORDER

Counsel for the parties were advised by this Court that a hearing would be held on Barbara Jean Crowther Chadwick's Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum on Monday, October 31, 1994 at 10:00 A.M. Defendant, H. Beatty Chadwick was personally served with a subpoena directing his appearance at that hearing and his attorney was served with a Notice to Attend and to Produce directing H. Beatty Chadwick's appearance at that hearing. Defendant, H. Beatty Chadwick, was represented by David Auerbach at that hearing on October 31, 1994. Defendant, H. Beatty Chadwick, did not appear at the hearing on October 31, 1994.

Upon consideration of the Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum, and after hearing thereon, it is hereby ORDERED and DECREED as follows:

1. H. Beatty Chadwick is held in Contempt of Court for willful violations of the Order of July 22, 1994. He is to be apprehended and incarcerated until a further hearing is held.

2. Because of defendant H. Beatty Chadwick's failure to appear at the scheduled October 31, 1994 hearing, notwithstanding valid service of a subpoena directing his appearance, this Court has issued a bench warrant for H. Beatty Chadwick's arrest. Said bench warrant shall not be rescinded without the approval of the undersigned judge. When apprehended, defendant, H. Beatty Chadwick, shall be incarcerated until a further hearing is held.

3. Defendant, H. Beatty Chadwick, is hereby enjoined from selling or in any way profiting from the release, publication, writing or other dissemination of the facts which are the subject of this litigation and any such rights or benefits are assigned to plaintiff, Barbara Jean Crowther Chadwick.

4. This matter is again referred to the Delaware County District Attorney's office and the United States Attorney's Office for possible prosecution of criminal charges against defendant, H. Beatty Chadwick.

5. Defendant, H. Beatty Chadwick, is again ordered to surrender his United States passport to this Court until further order. The State Department shall be notified of this Order and of the July 22, 1994 Order so that appropriate action may be taken, including the placing of a hold on H. Beatty Chadwick's United States passport. This Court has previously ordered that H. Beatty Chadwick shall not leave the Commonwealth of Pennsylvania, and shall not leave the United States.

6. This matter is referred to the Disciplinary Board of the Supreme Court of Pennsylvania for investigation of the ethical violations by H. Beatty Chadwick. This Court recommends to the Disciplinary Board that H. Beatty Chadwick's license to practice law be suspended as soon as possible.

DATED this 31st Day of October, 1994 at Media, Delaware County, Pennsylvania.

BY THE COURT:

/s/ Joseph Labrum
Labrum, J.

11-2-94

EXHIBIT C

**IN THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW**

H. BEATTY CHADWICK **Petitioner** **V.** **RONALD NARDOLILLO, Warden George W. Hill Correctional Facility,** **Respondent**	**M.D. NO. 504-07**

ORDER

AND NOW, to wit, this 27th day of October, **2004**, it is hereby **ORDERED** as follows:

1. Each party is awarded 50% of the marital estate. Accordingly, each party is awarded the sum of $3,068,742.00, together with 50% of all interest earned on the real estate escrow account up to and including the date of its liquidation.

2. The marital estate is awarded as follows:

To Plaintiff:		$3,068,742.00
Plaintiff's Checking Account	($	500.00)
Joint Savings Account	($	2,000.00)
Plaintiff's IRA	($	23,000.00)
Plaintiff's U.S.A.A. Account	($	2,500.00)
Automobiles	($	16,275.00)

Funds Previously received by Plaintiff	($ 232,000.00)
Real Estate Escrow Account	($ 77,181.00)
Balance	$2,715,286.00
Less: Funds received from Trust Escrow Account	($108,772.00)
Balance to be paid to Plaintiff	$2,606,514.00

To Defendant:

Defendant's Checking Account	$ 1,000.00
Defendant's IRA	$ 40,000.00
Motorcycles	$ 10,500.00
Assets retained	$ 39,066.00
Marital Assets Transferred to Maison Blanche Limited	$5,648,462.00
Distributions-Real Estate Escrow Account	$ 45,000.00
Total	$5,784,028.00
Defendant's Award	($3,068,742.00)
Balance to be paid to Plaintiff	$ 2,715,286.00
Less: Funds paid from Trust Escrow Account	($ 108,772.00)
Balance to be paid to Plaintiff	$2,606,514.00

3. The balance to be paid by the Defendant to the Plaintiff hereunder shall be paid within thirty (30) days of the date hereof.

4. Defendant is awarded the interest in the investment in Maison Blanche Limited. Any excess in the value of the interest in Maison Blanche Limited over and above the sum of $8,189,909 shall be divided into marital and non-marital components by the methodology employed herein, and the marital component(s) shall be divided equally.

5. Any increase in the value of the escrow accounts since the date of their valuation herein shall, similarly, be divided equally between the parties but paid to the Plaintiff with appropriate credit to the Defendant.

6. Each party is awarded the marital personalty retained by him or her.

7. Defendant shall also pay Plaintiff the sum of $14,520, representing one-half of the fair rental value of the marital home during her dispossession therefrom, less one-half of the mortgage and property tax payments made by Defendant during that time, within thirty (30) days of the date hereof.

8. Defendant shall pay Plaintiff the sum of $125,820 in consideration of past due alimony pendente lite within thirty (30) days of the date hereof.

9. No award of permanent alimony is made.

10. The Defendant shall pay counsel fees to the Plaintiff in the amount of $1,463,790 within thirty

(30) days of the date hereof. This amount is calculated as follows:

$1,879,738	total counsel fees and costs
($ 20,000)	incurred in non-divorce matters
($ 30,000)	Plaintiff's normal responsibility
$1,829,738	fees and costs allocable to the divorce action
X .80	adjustment for incidental matters and any duplication
$1,463,790	counsel fees to be paid by Defendant

11. The remaining balance of the escrow account funded by the interest of the Robert L. Montgomery trusts, including any interest thereon, shall be paid to Plaintiff in consideration of the award made to her hereunder.

12. Any and all sums paid by or on behalf of Defendant to Plaintiff hereunder shall be first applied to the award of marital property and counsel fees and costs hereunder, and last to payment of past due alimony pendente lite.

13. The Plaintiff is awarded a lien and charge against the funds transmitted by Defendant to Maison Blanche Limited, and all appreciation and income attributable thereto, in whatever form those funds may have taken in the interim, pursuant to the provisions of 23 Pa. C. S. A. 3502(b); in order to effect compliance with this Order.

14. The Plaintiff is awarded judgment against the Defendant in the amount of $4,210,644. This sum represents the equitable distribution award made herein together with the awards for fair rental value, past due alimony pendente lite, and counsel fees and costs, less the balance of the escrow account funded with the income from the Robert L. Montgomery trusts. The prior judgment of this Court in the amount of $290,000 is to be considered merged herein and of no force and effect.

15. The Robert L. Montgomery trusts shall continue to make all income payments due to the Defendant to the Plaintiff, and, additionally, when permitted under the trust instruments, the Robert L. Montgomery trusts shall make any payments of principal due to the Defendant to the Plaintiff, for so long as any of the obligations imposed upon the Defendant under the terms of this Order shall remain unsatisfied.

16. Defendant shall post security in the amount of $4,210,644 in order to insure compliance with the terms of this Order.

17. Defendant shall pay Plaintiff interest at the legal rate on all sums required to be paid under the terms of this Order, until such sums have been paid in full.

18. The sum of Twenty-Five Thousand Dollars ($25,000) shall be held in escrow by counsel for the Plaintiff, as agent for the parties, and applied against the fees and costs of the search of The Honorable A.

Leo Sereni for the status and location of the funds initially transferred to Maison Blanche Limited. Any sums not so expended shall be considered to be a part of the marital estate, but shall be paid to the Plaintiff in satisfaction of the Award made to her herein.

19. The parties shall execute any and all documents reasonably required in giving effect to the provisions of this Order.

BY THE COURT:

/s/ Chad F. Kenney, Sr.
CHAD F. KENNEY, SR.,
JUDGE

EXHIBIT D

IN THE COURT OR COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA JEAN CROWTHER CHADWICK	:	**NO. 92-19535**
v.	:	
H. BEATTY CHADWICK	:	

ORDER

AND NOW, this 16th day of May, 2005, upon consideration of the Emergency Petition for Special Relief of H. Beatty Chadwick, Answer and Supplemental Answer with New Matter of Barbara Jean Crowther Chadwick, and Reply to New Matter, Memoranda of Law having been submitted and a conference being held thereon, it is hereby ORDERED that said Petition is DISMISSED, the Court concluding that:

1. The Orders of July 22, 1994 and November 2, 1994 continue to be in full force and effect;

2. The Order entered on October 27, 2004 directing distribution of the marital property is independent of the Court's prior determinations;

3. Petitioner's continued contempt was not addressed or rendered moot by the entry of the final Order on October 27, 2004;

4. On January 28, 2005, the Superior Court entered an Order granting Respondent's Motion to Quash Appeal; the sole basis of Respondent's Motion was that under Pennsylvania law, where a party is in violation of a trial court order and the contempt is flagrant, an appeal should be denied or quashed. *See, Librett v. Marran*, 854 A.2d 1278 (Pa.Super. 2004); *Faterni v. Faterni*, 537 A.2d 840 (Pa.Super. 1988);

5. The purpose of the July 22, 1994 and November 2, 1994 Orders which directed Petitioner, among other things, to return the $2.5 Million to an escrow account under the jurisdiction of the Delaware County Court of Common Pleas as well as an Order finding him in contempt for failing to do so continues as Petitioner continues to be in contempt of the Order to return the secreted funds; and

6. As the Superior Court held in the appeal of the denial of Petitioner's second habeas corpus petition, the Courts of the Commonwealth of Pennsylvania have the inherent ability to coerce compliance with their orders whether it be through a statute or otherwise. Therefore, there is no time limit on how long Petitioner may be held provided that the Court still finds that Mr. Chadwick can comply with the Orders. To date, he has established nothing which would lead to any change in that determination, and he has failed to produce any evidence of what happened to the money of which this Court has found he still has control. *See, H. Beatty Chadwick v. George W*

Hill, Warden, No. 2198 Philadelphia 1996 (Slip Op. filed April 27, 1997).

BY THE COURT,

/s/ [Illegible]
KENNETH A. CLOUSE, P.J.

EXHIBIT E

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA JEAN CROWTHER CHADWICK	:	
v.	:	**NO. 92-1953**
H. BEATTY CHADWICK	:	

ORDER

(Filed Apr. 12, 2004)

AND NOW, this 8th day of April, 2004, it is hereby ORDERED that the Fee Agreement entered into between H. Beatty Chadwick and Michael J. Malloy, Esquire, and Barbara Jean Crowther Chadwick and Kevin C. McCullough, Esquire in the above matter is approved and adopted as an Order of this Court.

BY THE COURT:

/s/ Kenneth A. Clouse
KENNETH A. CLOUSE, P.J.

IN THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY PENNSYLVANIA
CIVIL ACTION – LAW

BARBARA JEAN
CROWTHER CHADWICK,
Plaintiff

NO. 92-19535

vs

H. BEATTY CHADWICK
Defendant

FEE AGREEMENT

H. Beatty Chadwick and Barbara Jean Crowther Chadwick do hereby acknowledge and agree to the appointment of A. Leo Sereni, Esquire as Master on behalf of the Court of Common Pleas of Delaware County in the above-captioned matter. Mr. Sereni's appointment shall grant him the right to investigate, search, and obtain any and all information regarding the monies transferred out of the United States by H. Beatty Chadwick, and which is subject to the court Order of July 22, 2004. We further agree that Mr. Sereni shall be paid a retainer in the amount of $5,000 with legal fees to be billed at an hourly rate of $250 for legal services rendered. In addition to legal fees, we acknowledge that Mr. Sereni shall be reimbursed for any and all reasonable expenses incurred in the course of his investigating this matter. All such payments for services and expenses are subject to review and approval by the Court. We further agree

that the monies for Mr. Sereni's services shall be authorized out of the escrow account which holds the distributions from the spendthrift trust otherwise payable to H. Beatty Chadwick. Said account is presently under the jurisdiction of Court of Common Pleas of Delaware County by the Honorable President Judge Kenneth A. Clouse.

/s/ H. Beatty Chadwick
H. BEATTY CHADWICK

/s/ Michael J. Malloy
MICHAEL J. MALLOY, ESQUIRE

/s/ Barbara Jean Crowther-Chadwick
BARBARA JEAN CROWTHER CHADWICK

/s/ Kevin C. McCullough
KEVIN C. MC CULLOUGH

EXHIBIT F

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW

BARBARA JEAN
CROWTHER CHADWICK,

Plaintiff,

No.: 92-19535

vs

H. BEATTY CHADWICK,

Defendant.

REPORT OF THE SPECIAL MASTER

(Filed Oct. 3, 2005)

I. Appointment

On April 8, 2004, this Court, with the agreement of the parties, appointed the undersigned as Special Master in this action in divorce. The defendant, H. Beatty Chadwick ("Mr. Chadwick"), has been incarcerated since April 1995 for civil contempt as a result of his failure to comply with a Court Order of July 22, 1994 to deposit approximately $2.5 million in a court-administered account.

As detailed below, I have investigated the circumstances which caused the issuance of the Order and whether Mr. Chadwick possesses or controls the monies he was ordered to deposit.

II. Factual Background

On July 22, 1994, in response to a Petition for Special Relief filed by Mr. Chadwick's wife, Barbara Jean Crowther Chadwick ("Mrs. Chadwick"), this Court issued an Order which, in material part, required that, within twenty-four hours, Mr. Chadwick place into an account the sum of approximately $2.5 million pending this Court's determination of whether Mrs. Chadwick was entitled to a share of that sum, and, if so, in what amount.

The sum was not deposited and, after a hearing on October 31, 1994, the Court held Mr. Chadwick in contempt. By Order dated November 2, 1994, this Court directed that Mr. Chadwick be incarcerated until a further hearing is held. There is no record of a further hearing. Nevertheless, Mr. Chadwick has been incarcerated under this Order since April 5, 1995. On April 12, 1995, bail was set at $3 million. Mr. Chadwick has not been able to post bail.

Although the Court found that Mr. Chadwick had not made the deposit of monies directed by the Court, it did not make any finding as to his ability to comply with the Order. A habeas corpus Court in September of 1995 found that Mr. Chadwick was capable of complying with the payment order, but did not set forth any reasons for this conclusion. It appears from the Court's opinion that the Court was influenced

primarily by a disbelief of Mr. Chadwick's claim of inability to comply.[1]

Mr. Chadwick has maintained and continues to maintain that he does not possess the funds to comply with the Court's payment order. The funds in question were transferred by Mr. Chadwick, mostly in cash but also approximately $532,000 in securities, to Maison Blanche Limited ("Maison Blanche") in February 1993 in satisfaction for a capital call he received under a Joint Venture Agreement he had entered into with that company in August 1990.

Mrs. Chadwick does not dispute that the funds were paid to Maison Blanche. She argues instead that the funds nevertheless have remained in the possession and control of Mr. Chadwick. In particular, Mrs. Chadwick points out that in April 1994, approximately $870,000 was transferred by Maison Blanche into annuities in Mr. Chadwick's name.

Although Mr. Chadwick acknowledges this transaction, he states that he simply served as a straw party for Maison Blanche and had no possession of the annuity contracts and did not receive the proceeds of the annuities.

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[1] Disbelief of a contemnor, however, is not, without more, a truth or reason to impose the sanction of imprisonment. *Barrett v. Barrett*, 360 A.2d 616, 621 (Pa. 1977).

Mrs. Chadwick disputes this, and contends that substantially all of the $2.5 million was funneled back to Mr. Chadwick by Maison Blanche.

Mr. Chadwick now has been incarcerated for almost ten years. My investigation has been directed to determining whether he has possession or control of any of the funds he paid to Maison Blanche and, if he does, to locate and take possession of such funds. If he does not possess or control such funds, however, his confinement cannot be legally justified.

III. The Investigation

A. The Transfers

The details of the transfer of the $2.5 million from Mr. Chadwick to Maison Blanche are set forth in the letter of Glenn Newman, CPA, dated June 15, 2005 (the "Parente Report").

Briefly, approximately $2.5 million in cash and securities were transferred by Mr. Chadwick to Maison Blanche and Mark Golinsky, identified as the London-based solicitor for Maison Blanche. Approximately $1.9 million in cash was wire transferred to Maison Blanche's account at ABN Amro Bank Gibraltar Ltd., and approximately $532,000 in securities were transferred to Mr. Golinsky.

Subsequently, approximately $969,000 was wired from Maison Blanche to Chemical Bank. It appears that, of that amount, $100,000 purchased securities in Grace Foods, $869,106 purchased an annuity

contracts with National Financial Services Corporation. Additionally, $995,726.41 was wired to the United Bank of Switzerland for deposit. The annuity contracts were later cashed out, and part of the proceeds wire transferred to Banco Mercantile del Istmo, S.A., in Panama; the balance of the proceeds is unaccounted for.

Thus, the trail ends at five placed (1) $532,000 in securities delivered to Mr. Golinsky; (2) $100,000 wired to Chemical Bank, in favor of Grace Foods; (3) two checks totaling $588,033.00 deposited in the Panamanian bank, made payable to "H.B. Chadwick" but not endorsed and deposited to an account of unknown ownership; (4) $995,726.41 wired to the Union Bank of Switzerland (Luxembourg) for the attention of "J. Hirsch"; and (5) $289,666.00 wired to the insurance company, American Skandia. The question before me is whether Mr. Chadwick has control over any of these funds.

B. The Hassan Affidavit

As a result of a lawsuit brought by Mrs. Chadwick against Maison Blanche in Gibraltar, she had obtained an affidavit from a Mr. Hassan (the "Hassan Affidavit).[2] The Hassan Affidavit purported to describe certain disbursements of funds by the company following the receipt of Mr. Chadwick's $2.5

[2] In that lawsuit Mrs. Chadwick was also awarded Mr. Chadwick's stock in Maison Blanche.

million payment. Mrs. Chadwick contends that the Hassan Affidavit supports her belief that Maison Blanche was merely a device by which Mr. Chadwick absconded with marital property, and that, after the $2.5 million was tendered to Maison Blanche, it was surreptitiously returned to Mr. Chadwick, and that he retains control over that money.

The Hassan Affidavit was not admitted in evidence in the contempt proceedings. I also note that Mr. Hassan claimed to be acting on behalf of Maison Blanche but, since he was never subjected to cross examination, that assertion could not be tested and/or confirmed. Further, although the Hassan Affidavit claims that the transfer to National Financial Services was "in favor of H.B. Chadwick," the actual transfer advice, which was attached to the Hassan Affidavit, bears no such notation.

Despite these questions, since the Hassan Affidavit purports to identify the last known transfer of the funds, I have utilized the Hassan Affidavit as a starting point to determine if Mr. Chadwick came into control of the funds after the transfers were made by Maison Blanche.

C. Parente Randolph

I also engaged the accounting firm of Parente Randolph, Philadelphia, PA to assist in my investigation.

Parente Randolph is comprised of individuals with backgrounds in accounting, forensic accounting, economics, finance and law. A branch of the firm specializes in forensic and litigation services. The partner in charge of the specialized work, Glenn Newman, CPA, met with both Mr. Chadwick and Albert Momjian, Esquire, attorney for Mrs. Chadwick. Mr. Momjian's associate, Kevin McCullough, Esquire, provided Mr. Newman with substantial documents from his files. Mr. Chadwick and his attorney, Michael Malloy, Esquire, provided material which was requested and voluntarily provided a power authorizing me to take possession of any of the assets in question, should any be located.

Parente Randolph thereupon engaged Intelysis Corp. of Toronto, Canada to provide specialized assistance. Intelysis is a boutique investigation and forensic accounting firm with a national reputation for expertise in tracing lost and stolen assets. Intelysis uses a network of agents throughout the world to conduct its investigations. The company conducted by extensive domestic and international search of assets generally, as well as the sources to which Mr. Momjian made reference and requested us to investigate.

D. <u>The United States</u>

Parente Randolph, together with Intelysis, conducted a search from July 2004 to January 2005. First, an extensive search was made to locate the assets of Mr. Chadwick in the United States. Addresses

connected to Mr. Chadwick were identified. Telephone records, bankruptcy records, tax rolls, land titles, corporate affiliations, aircraft and watercraft registrations, Uniform Commercial Code filings and numerous other databases were examined.

No assets belonging to Mr. Chadwick were found in the United States.

E. Overseas

1. Mark Golinsky

The search then turned overseas. At my direction, Parente Randolph contacted Mark Golinsky, the London-based solicitor identified as Maison Blanche's counsel and the individual with whom Mr. Chadwick reports that he negotiated regarding the capital call, and at whose instructions he claims to have acted in making the transfer.

Mr. Golinsky was unwilling to cooperate, however. He at first claimed that he would need Maison Blanche's permission to discuss the matter, and that he would have to be paid for his time. Mr. Golinsky later relented somewhat, but only enough to advise us that his memory of the transaction was dim and his records had been destroyed.

This is unfortunate, because Mr. Golinsky apparently took possession of at least some of the funds upon Mr. Chadwick's transfer. The record contains a receipt from Mr. Golinsky for the $532,000 in securities, and at his deposition Mr. Chadwick's broker,

from Wheat First Butcher Singer, confirmed that he had transferred the securities to Mr. Golinsky. Thus, I believe that Mr. Golinsky could have provided valuable insight into what happened to the money afterward.

Inexplicably, Mrs. Chadwick's counsel did not attempt to take Mr. Golinsky's deposition, obtain his files, or even talk to him. I am informed that, when questioned about this by an accountant with Parente Randolph, Kevin McCullough stated that they did not contact Mr. Golinsky because they assumed that he was conspiring with Mr. Chadwick to hide the money, and that therefore it would be futile.

It is difficult to conceive of a litigation strategy that does not require taking discovery of one's opponent's alleged co-conspirators. It is impossible to say whether or not counsel's decision not to take discovery of Mr. Golinsky has prejudiced Mrs. Chadwick, because we will never know what Mr. Golinsky would have said, or what his documents would have revealed.

2. Union Bank of Switzerland (Luxembourg)

The Hassan Affidavit indicated that Maison Blanche, following Mr. Chadwick's payment of funds to Maison Blanche, had transferred monies to a bank in Luxembourg. Accordingly, a search was made there.

No account for Mr. Chadwick was found, however, and Mr. Chadwick did not appear to be associated with the accounts to which the Maison Blanche transfers were purportedly made.

3. Banco Mercantile del Istmo

An investigation also was made at the Panamanian bank where two check for the proceeds of an annuity, once held by Mr. Chadwick as a "straw party," were deposited.

No account for Mr. Chadwick could be located at that bank at any time nor could the deposit be identified or traced.

4. American Skandia

No documentation was available regarding the $296,389.47.

5. Other Possibilities

The investigation performed by Parente Randolph and Intelysis was as exhaustive as a forensic accountant could perform. The investigation concluded that Mr. Chadwick does not possess or control any assets which would give him the capability of paying to the Court the sum of approximately $2.5 million which he had been ordered to deposit.

Counsel for Mrs. Chadwick has also sought Mr. Chadwick's 1993 tax returns. I am reliably informed,

however, that the Internal Revenue Service has destroyed returns from that year, and Mr. Chadwick has steadfastly maintained that he is not in possession of his copy. Moreover, it is unclear to me what Mrs. Chadwick hopes to learn from the 1998 tax returns. Assuming, *arguendo*, that the 1993 tax returns would show that Mr. Chadwick had investment income during that year, or that he had reported capital gains on the sale of assets, the 1993 tax returns would not indicate the disposition of those funds, and therefore would not assist the Special Master in determining whether Mr. Chadwick has present control over any such funds. I have therefore concluded that the 1993 tax returns would have been of no utility.

Counsel for Mrs. Chadwick has also sought to compel Mr. Chadwick's various lawyers to breach the attorney-client privilege and reveal the sources of any payments made to them for their representation of Mr. Chadwick in his numerous habeas corpus and other filings. One hopes that Mrs. Chadwick is not implying, without proof, that any of these attorneys were complicit in a scheme to hide money from her, involving overseas funds. Moreover, it is the Special Master's understanding that Mr. Chadwick has undertaken many actions *pro se*, and that, even when he is represented by counsel, he performs much of the drafting and research himself to keep his legal expenses down. Mr. Chadwick also explains that he has obtained funding, in small amounts, from his children and a few friends. I therefore conclude that there is

no reasonable grounds for believing that this information will advance Mrs. Chadwick's cause at all.

IV. Discussion

In contrast to criminal contempt sanctions, which are designed to punish the contemnor for disobeying the court, a sanction for civil contempt, like the sanction imposed here on Mr. Chadwick, is designed to coerce the contemnor into future compliance with the court's mandate and are avoidable through obedience. *See International Union, UMWA v. Bagwell,* 512 U.S. 821, xxx, 114 S. Ct. 2552, 2557 (1994). The traditional view is that imprisoned civil contemnors "carry the keys of their prison in their own pockets." *In re Nevitt,* 117 F. 448, 461 (8th Cir. 1902); *In re Contempt of Liles,* 216 Neb. 531, 344 N.W. 2d 626 (1984) (stating that "[w]hen a coercive sanction is imposed, 'the contemnor [sic] holds the keys to his jail cell, in that the sentence is conditioned upon his continued noncompliance.' ")

According to this view, the contemnor chose not to obey the court order, and he continues to choose not to obey, so each day he spends in jail is "a day voluntarily spent in custody in preference to compliance on that day." *Ochoa v. United States,* 819 F.2d 366, 371 (2d Cir. 1987).

In the early leading case dealing with contempt imprisonment, *Gompers v. Buck's Stove & Range Company,* the Supreme Court distinguished between imprisonment for punitive purposes and imprisonment

for coercive purposes. *See Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 442-52 (1911). In that case, the Supreme Court held that a twelve month sentence imposed on labor activist Samuel Gompers in a civil contempt proceeding had no coercive force and therefore was punitive and could not be imposed, consistent with the due process clause, without affording criminal due process rights.

Courts recognize, however, that most sanctions contain both coercive and punitive elements, and the categorization therefore focuses on "an examination of the character of the relief itself." *Bagwell,* 512 U.S. at 828. Courts also recognize that "what starts as coercive can over time become punitive" in that a contempt order may lose its coercive effect during the course of the contemnor's confinement, "leaving punishment as the sole justification for its maintenance." *In re Grand Jury Proceedings of December, 1989 (Freligh),* 903 F.3d 1167, 1169 (7th Cir. 1990); *see also In re Crededio,* 759 F.2d 589, 590 (7th Cir. 1985); *Simkin v. United States,* 715 F.3d 34, 36 (2nd Cir. 1983).

Since, in *Gompers,* the Supreme Court held that punitive sanctions are impermissible in civil contempt proceedings, a number of federal courts and some state courts have enunciated the principle that when there is no reasonable likelihood that civil contempt imprisonment will compel compliance, the imprisonment loses its coercive force and becomes impermissibly punitive. *See, e.g., In re Lawrence,* 279 F.3d 1294, 1300 (11th Cir. 2002); *Soobzowen v. Ciss,*

Inc., 642 F.2d 28, 31 (2nd Cir. 1981); *In Re Grand Jury Investigation*, 600 F.2d 420, 424 (3rd Cir. 1979); *Lamiscri v. Montana*, 545 F.2d 87, 89-91 (9th Cir. 1976); *Caterra v. Seidbl*, 344 A.2d 744, 747 (N.J. 1975); *Morgan v. Foretich*, 564 A.2d 1 (D.C. 1989).

The Third Circuit declared "it is abhorrent to our concept of personal freedom that the process of civil contempt can be used to jail a person indefinitely, possibly for life, even though he or she refuses to comply with the court's order." *In Re Grand Jury Investigation*, 600 F.2d at 424. Courts also have acknowledged that contempt imprisonment cannot last "forever." *U.S. Ex. Rel. Thom v. Jankins*, 760 F.2d 736 (7th Cir. 1985); *Wellington Precious Metals*, 950 F.2d 1525 (11th Cir. 1992).

V. Conclusion

1. The Special Master accepts and adopts the findings of Parente Randolph and Intelysis, which concluded that there is no indication that Mr. Chadwick currently maintains control or has access to assets originally transferred to Maison Blanche in 1993.

2. The Special Master has exhaustively reviewed the entire investigative record of counsel for the plaintiff and counsel for the defendant.

3. The Special Master concludes that Mr. Chadwick does not possess or control any of the disputed monies and, accordingly, he does not have

the ability to comply with the conditions set by the Court to purge himself of his contempt. Therefore, it is determined that Mr. Chadwick's present incarceration serves no lawful or practical purpose in the enforcement of the original Court Order.

4. Upon reviewing the facts and applicable law, I am compelled to conclude that Mr. Chadwick's present incarceration has, in effect, become a life sentence without the protections and benefits of the basic constitutional protections afforded to those citizens accused of more heinous acts.

5. The Special Master respectfully and strongly recommends that Mr. Chadwick be released from his present incarceration.

MATTIONI, LTD.

October 3, 2005
DATE

BY: /s/ A. Leo Sereni
A. LEO SERENI, ESQUIRE
Special Master
Identification No. 08813
399 Market Street, Second Floor
Philadelphia, PA 19106
(215) 629-1600

EXHIBIT G

**IN THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY,
PENNSYLVANIA CIVIL ACTION – LAW**

BARBARA JEAN CROWTHER CHADWICK	:	
	:	**NO. 92-19535**
v.	:	
H. BEATTY CHADWICK	:	

ORDER

AND NOW, this 22nd day of February, 2006, upon consideration of H. Beatty Chadwick's Petition for Writ of Habeas Corpus, the Report of the Special Master A. Leo Sereni (filed October 3, 2005), Exception/ Objections to the Sereni Report filed by Plaintiff Barbara Jean Crowther Chadwick (now Barbara Applegate), and after hearing held on December 6, 2005 before an en banc panel of the undersigned Judges, it is hereby ORDERED that:

1. The Report of Special Master Sereni is STRICKEN in its entirety; and
2. The Petition of H. Beatty Chadwick for Writ of Habeas Corpus is DENIED.

In connection therewith, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. H. Beatty Chadwick is the Defendant in the above captioned divorce case which was initiated by

Plaintiff Barbara Jean Crowther Chadwick (now Applegate) in the Court of Common Pleas of Delaware County on November 23, 1992. In connection therewith, Plaintiff also sought alimony, counsel fees and the equitable distribution of the marital property.

2. On July 19, 1994, Plaintiff filed an Emergency Omnibus Petition for Special Relief which she alleged, *inter alia,* that Defendant Chadwick had transferred Two Million, Five Hundred Thousand ($2,500,000.00) Dollars in marital funds out of the United States and outside of the Court's jurisdiction.

3. In response to Plaintiff's Emergency Omnibus Petition for Special Relief, and after a hearing, the Honorable Joseph Labrum of the Court of Common Pleas of Delaware County issued an Order on July 22, 1994, directing Mr. Chadwick to, *inter alia,* return the $2.5 million that he transferred out of the United States in February, 1993, to an account under the jurisdiction of this Court, and enjoining him from further assigning, concealing, secreting or dissipating marital assets.

4. Defendant Chadwick was eventually found in civil contempt of Judge Labrum's July 22, 1994 Order, and on November 2, 1994, the Judge directed that he be imprisoned. Mr. Chadwick was arrested on April 5, 1995, and bail was set at Three Million ($3,000,000.00) Dollars. The Court determined that Mr. Chadwick had the present ability to comply with the terms of the July 22, 1994 Order, *Chadwick v. Janecka,* 312 F.3d

597 (3d Cir. 2002); he remains incarcerated to this day.

5. Since his confinement, Defendant Chadwick has applied numerous times to both the state and federal courts to gain release from the incarceration.

6. Defendant Chadwick has initiated approximately eleven (11) habeas corpus and similar petitions in the Court of Common Pleas of Delaware County; eight (8) petitions or appeals with the Pennsylvania Superior Court relating to his incarceration; nine (9) proceedings with the Pennsylvania Supreme Court, including a King's Bench Petition; six (6) proceedings with the United States District Court; four (4) proceedings before the Third Circuit Court of Appeals; and two (2) proceedings with the United States Supreme Court.

7. Pennsylvania courts and the Third Circuit Court of Appeals have repeatedly found that Defendant Chadwick is in contempt of the Order to return the transferred funds and that Defendant continues to remain in flagrant disregard of the Order, despite having the ability to comply therewith.

8. The Third Circuit Court of Appeals, in an opinion authored by Circuit Judge Samuel A. Alito, reversed a District Court order granting one of Defendant Chadwick's Petitions for Writ of Habeas Corpus, noting that Defendant Chadwick had applied eight (8) times to the Courts of Pennsylvania and six (6) times to the Federal District Court for release

from incarceration.[1] The Third Circuit concluded as follows:

> Because the state courts have repeatedly found that Mr. Chadwick has the present ability to comply with the July 1994 state court order, we cannot disturb the state courts' decision that there is no federal constitutional bar to Mr. Chadwick's indefinite confinement for civil contempt so long as he retains the ability to comply with the order requiring him to pay over the money at issue. Accordingly, the District Court erred in holding that the state courts' decisions were an unreasonable application of Supreme Court precedent. We, therefore, reverse the order of the District Court granting Mr. Chadwick's petition.
>
> *Chadwick v. Janecka,* 312 F.3d 597 (3d Cir. 2002)

9. More recently, by Order dated October 27, 2004, The Honorable Chad F. Kenney entered an equitable distribution award, supported by Findings of Fact and Conclusions of Law. Judge Kenney found as fact as follows:

> (93) During the course of his incarceration, the Defendant, while maintaining that he has no assets

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[1] Then Circuit Judge Samuel A. Alito is now United States Supreme Court Justice Alito.

or funds enabling him to comply with the Court's Order, has consulted and/or retained a substantial number of attorneys.

(94) During the course of his incarceration, the Defendant, while maintaining that he has no assets or funds enabling him to comply with the Court's Order, has filed the various proceedings identified hereinafter.

(95) During the course of his incarceration, the Defendant, while maintaining that he has no assets or funds enabling him to comply with the Court's Order, has filed a Defamation Action in the Courts of the State of Delaware.

(96) During the course of his incarceration, the Defendant, while maintaining that he has no assets or funds enabling him to comply with the Court's Order, has filed an action in the state courts of the State of Maine.

(97) During the course of his incarceration, the Defendant, while maintaining that he has no assets or funds enabling him to comply with the Court's Order has filed

> an Action in the Federal Courts in the State of Maine.

[12/6/05 Exh. P-1 at tab 7].

10. Judge Kenney took judicial notice of the following facts in his October 27, 2004 Order:

> (100) The Court had repeatedly found that Defendant Chadwick maintains control over the transferred funds;
>
> (101) Defendant Chadwick agreed that all of the prior proceedings before the Court may be considered a part of the record;
>
> (102) Defendant Chadwick's testimony that the transfer of the funds was a legitimate response to a capital call was not credible or worthy of belief;
>
> (103) The signatures on relevant checks, annuity documents and redemption correspondence were Defendant Chadwick's;
>
> (104) Defendant Chadwick's testimony that he acted as a straw party and received and reinvested the transferred assets was not credible or worthy of belief; and
>
> (105) The transfer of the funds was done in fraud of Plaintiff Applegate and her rights in Equitable

> Distribution. [12/6/05 Exh. P-1 at tab 7].

11. Judge Kenney further concluded that based on the evidence produced during the trial, it was "clear to the Court that [Chadwick], at all times material hereto, has had control of the sums transferred to Maison Blanche Limited." [*Id.*] (106)

12. In his Order, Judge Kenney also cited the December 30, 2003 Order entered by The Honorable Kevin F. Kelly wherein Judge Kelly concluded, in part, as follows:

> (a) All previous state as well as federal trial courts and appellate courts who have reviewed the material portions of the record concluded directly and/or indirectly that the evidence sufficiently supports (1) the legal propriety of Chadwick's ongoing contempt incarceration and (2) the related determination that he has currently, as well as at all relevant past times, had the ability to readily cause his release from such incarceration through, *inter alia,* the production of the $2.5 million dollars;
>
> (b) To date, Chadwick has failed to return and/or adequately account for the $2.5 million dollars he initially transferred to Maison Blanche Limited as past courts have ordered; and
>
> (c) As a matter of law, Chadwick's ongoing willful contemptuous actions and/or

> failure to act, mandated that previous trial courts be convinced beyond a reasonable doubt from the totality of evidence presented that Chadwick had and continues to enjoy the present ability to comply with any orders material to his producing the $2.5 million dollars. [12/6/05 Exh. P-1 at tab 11].

13. Judge Kelly entered an Order on December 30, 2003, which provided, in pertinent part, as follows:

> Regarding the period of time up to and including the date of H. Beatty Chadwick's most recent Contempt Evidentiary Hearing immediately prior to the instant action's Equitable Distribution Trial, **ANY AND ALL** salient Findings of Fact regarding, *inter alia,* the existence, location, control, constructive or otherwise by H. Beatty Chadwick and/or the value of the $2,502,000 in whole and/or in part, initially transferred by H. Beatty Chadwick to Maison Blanche Limited in Gibraltar made by the Trial Court in these related contempt proceedings, *inter alia,* **SHALL** be considered the law of the case and, hence, **NO EVIDENCE CONTRARY** to these Findings of Fact **SHALL** be permitted to be introduced at **ANY HEARING** in the above-captioned matter concerning the Equitable Distribution of the marital estate at bar.

> Regarding the period of time subsequent to the most recent Contempt proceeding through and including the to be scheduled Equitable Distribution hearing, H. Beatty Chadwick **SHALL** be **PERMITTED** to introduce evidence, if any, relating to the existence, location, control, constructive or otherwise by him and/or present value of the $2,502,000 initially transferred by H. Beatty Chadwick to Maison Blanche Limited in Gibraltar, **ONLY IF** there has arisen since the date of the then immediate past Contempt proceeding any material change in circumstances and/or newly discovered evidence as relates to the $2,502,000 with **ALL** such evidence generally post-dating the then most recent Contempt evidentiary hearing and at the Equitable Distribution Trial subject to specific evidentiary rulings as may then be applicable.

[Order at pp. 3-4. Emphasis in original]

14. The Court finds that the secreted assets, if not touched, would have had a value of approximately $8.1 million as of April 2004. [12/6/05, Tr. I at 100, Exh. P-1 at tab 7.

15. By Order dated April 8, 2004, A. Leo Sereni, Esquire was appointed to "investigate, search and obtain any and all information regarding the money transferred out of the United States by H. Beatty Chadwick, which is the subject of the Court Order of

July 22, 1994." [12/6/05, Tr. I at 11-12, Exh. P-1 at tab 1].

16. Master Sereni submitted a written Report which was filed of record on or about October 3, 2005. [12/6/05, Tr. I at 12, Exh. P-1 at tab 15]. The Court made the said Report a part of the record of this case. [12/6/05 Tr. I at 12].

17. A hearing was held on December 6, 2005 on Defendant Chadwick's Petition for Writ of Habeas Corpus. [Tr. I and Tr. II].[2] At the hearing, the Court considered what effect, if any, Master Sereni's Report would have on the underlying issue in this matter, i.e., the ability of Mr. Chadwick to comply with the Court Order as aforesaid and whether he remains in willful contempt of that Order. [12/6/05, Tr. I at 8-9].

18. The Court finds that Master Sereni's Report and conclusions are based upon the underlying investigations and reports of Parente Randolph and Intelysis. [Tr. I at 15].

19. The Court finds that Master Sereni's Report states that he was unable to locate or trace any accounts or assets in Defendant Chadwick's name. [Tr. I at 16, 132] and that, in fact, Master Sereni's investigation failed to trace the secreted funds even one step beyond where Plaintiff Applegate's counsel

[2] Tr. II refers to the notes of testimony for the afternoon session of the 12/6/05 hearing.

had already been able to trace him. [Tr. I at 136-138, 140-141, 147-148, 157].

20. The Court finds Master Sereni credible when he testified that he voiced agreement with the prior decisions of this Court [Tr. I at 28-29], but that Master Sereni nevertheless asserted in his Report that Defendant Chadwick does not possess or control the secreted assets and accordingly, does not have the ability to comply with the July 22, 1994 Order and should be released from his present incarceration. [12/6/05 Exh. P-1 at tab 15].

21. The Court finds that Master Sereni failed to consider the already-known trail of the early transactions regarding the secreted funds. [Tr. I at 31-37]; specifically, the Court finds Master Sereni credible when he testified that he was not aware that a portion of the secreted assets had been returned to the United States. [Tr. I at 147].

22. The Court finds that in asserting that Defendant Chadwick should be released, Master Sereni also completely ignored the multitude of findings by various Judges and Courts over the past eleven (11) years as to Mr. Chadwick's present ability to comply with the Court Order as aforesaid. [12/6/06 Exh. P-1 at tabs 7, 11, 15].

23. The Court finds that Master Sereni's authority under this Court's Order of April 8, 2004 was specifically limited to the "right to investigate, search and obtain any and all information regarding the

monies transferred out of the United States by H. Beatty Chadwick." [12/6/05 Exh. P-1 at tab 1].

24. The Court further finds that there is no provision in the Order granting Master Sereni the authority to do anything other than attempt to trace and locate the assets secreted by Defendant Chadwick.

25. The Court finds that Master Sereni had no authority to recommend that because he and the accountants he retained were unable to locate assets controlled by or on behalf of Defendant Chadwick, that Defendant Chadwick should be released from prison.

26. The Court finds that Master Sereni exceeded his authority in making any determinations regarding Chadwick's credibility. [Tr. I at 58].

27. The Court finds Master Sereni credible when he testified that in pursuing his investigations, he was assured of Defendant Chadwick's full cooperation. [Tr. I at 45].

28. The Court finds that Master Sereni's appointment and his ability to trace the secreted funds were contingent on Defendant Chadwick's cooperation, which was not provided. [Tr. I at 45, 53-58, 114-119].

29. The Court finds that Counsel for Plaintiff Applegate prepared and forwarded to Master Sereni the following documents for Chadwick's signature:

a. Form 4506 – request for copy of tax return for tax years 1993 through 2003;

b. Durable Limited Power of Attorney to be executed by Defendant Chadwick appointing Master Sereni to act as his agent in his attempt to locate the funds; and

c. Authorizations addressed to certain attorneys who have appeared on behalf of or represented Defendant Chadwick in relevant proceedings, directing the release of only billing information showing payments made by or on behalf of Defendant and the source of the payment, if known. [Tr. I at 39-41; 12/6/05 Exh. P-1 at tab 4].

30. The Court finds that Defendant Chadwick refused to sign the above stated authorizations [Tr. I at 45, 53-58, 114-119], notwithstanding the fact that they were consistent with the intent of this Court in appointing Master Sereni.

31. The Court further finds that Defendant Chadwick instead signed three (3) ineffective authorizations of his own creation, as follows:

a. Authorization for Defendant's attorney to communicate to Master Sereni that they have not represented him with regard to Maison Blanche and that they have no knowledge of any

facts that Defendant possesses or controls the relevant monies;

b. Authorization allowing Master Sereni to place any monies located in an account under the control of the Delaware County Court of Common Pleas; and

c. Authorization for Master Sereni to speak with Defendant's physician. [Tr. I at 43-48].

32. The Court finds Master Sereni credible when he testified that Defendant Chadwick specifically refused, on advice of counsel, to sign a general power of attorney. [Tr. I at 45-47]. The Court further finds that what was provided for Defendant Chadwick's signature, however, was a *limited* power of attorney, which he also refused to sign. [12/6/05 Exh. P-1 at tab 4].

33. The Court further finds Master Sereni credible when he testified that Defendant Chadwick also specifically refused to sign narrowly drafted authorizations directing the release of billing information from the multiple attorneys whose services he has retained. [Tr. I at 56-58].

34. The Court finds Master Sereni credible when he testified that Plaintiff Applegate's counsel repeatedly objected to and noted his dissatisfaction with the Report and the futility of the continuation of the investigation in light of Defendant Chadwick's

flagrant lack of cooperation. [Tr. I at 101-106, 111-113; 12/6/05 Exh. P-1 at tabs 4, 5, 6].

35. The Court finds that as communicated in a letter from Plaintiff Applegate's counsel to Master Sereni dated August 12, 2004, Defendant Chadwick's signed authorizations were virtually useless in that:

a. The authorization to communicate with attorneys served no purpose since it had never been suggested that any of the attorneys that have represented Defendant in the case had any knowledge of his fraudulent scheme or the current whereabouts of the assets;

b. The authorization allowing Master Sereni to place any monies found in escrow presupposes that Master Sereni would be given the means necessary to locate the monies, which Defendant Chadwick thwarted by his refusal to sign the appropriate authorizations;

c. Finally, the authorization for Master Sereni to speak with Defendant's physician served absolutely no purpose to Master Sereni's investigation and was obviously well beyond the scope of his appointment. [12/6/05 Exh. P-1 at tab 4].

36. The Court finds that Plaintiff Applegate's counsel repeatedly communicated to Master Sereni

the pressing need to obtain the necessary releases/ authorizations and the futility of pursuing the tracing of the funds without them. The Court further finds that counsel for Plaintiff specifically noted that given Defendant's blatant lack of cooperation, it may not make sense to continue the investigation at all without actual access to the institutions and individuals that have received and may continue to receive or hold assets belonging to Defendant. [12/6/05 Exh. P-1 at tabs 4, 5, 6]. See 12/6/05 Exh. P-1 at tab 5 ("One of the motivating factors behind the agreement that was reached before Judge Clouse regarding your appointment was that Mr. Chadwick would cooperate with all efforts that were being made to locate the funds. He has obviously not done that since he has not signed the authorizations we sent, something he has not done since he was first ordered to do so in October, 1995 by Judge Battle").

37. The Court finds Master Sereni credible when he testified that he recognized Plaintiff Applegate's counsel's objections as "serious concerns" and acknowledged that Plaintiff's counsel communicated dissatisfaction with the progress of the investigation and its preliminary results/reports and suggested additional measures which could have been taken. [Tr. I at 103-104].

38. The Court finds Master Sereni credible when he testified that counsel for Plaintiff advised him that the Consul General of Panama located in Philadelphia would make arrangements to get access to the Panamanian bank account (previously located

by Plaintiff's counsel), if Master Sereni secured an authorization signed by Defendant. [Tr. I at 110].

39. The Court finds that Master Sereni failed to seek judicial intervention when faced with Defendant Chadwick's refusal to cooperate in the investigation. [Tr. I at 108]. The Court further finds that Master Sereni also failed to secure – or even recognize the importance of securing – any authorizations or powers of attorney signed by Defendant Chadwick. [Tr. I at 109-110].

40. The Court finds that it was unreasonable in the face of Defendant Chadwick's conduct for Intelysis, Parente Randolph and Master Sereni to fail to draw any adverse inference from Defendant's lack of cooperation as above described.

41. The Court further finds that Master Sereni erred in even pursuing his investigation in the face of Defendant Chadwick's blatant lack of cooperation in refusing to sign necessary releases/authorizations and Plaintiff's counsel's underscoring the futility of further inquiry unless and until Defendant Chadwick cooperated as he had agreed to do. [12/6/05 Exh. P-1 at tabs 4, 5, 6].

42. The Court finds that although Master Sereni testified that the accounting firm, Parente Randolph, considered Defendant Chadwick's refusal to sign necessary authorizations "no impediment in their efforts to trace the money" [Tr. I at 44], Parente Randolph specifically noted in its report that Defendant's lack of cooperation, specifically his refusal to

sign certain authorizations, hampered their investigation. [12/6/05 Exh. P-1 at tab 15].

43. The Court finds that Master Sereni erred in minimizing the potential importance of information concerning the source of any payments made to Defendant Chadwick's many attorneys, by Chadwick or on his behalf, and that said information would advance the asset search that Master Sereni was charged to conduct and in failing to take any meaningful steps to obtain it.

44. The Court finds that Parente Randolph's own Report highlighted its shortcomings by underscoring the ways in which Defendant's lack of cooperation impeded their investigation, as follows:

> There are a number of open items that, had they been explored, may have been a source of additional information on the status of assets that may be under the control of [Chadwick]. Unfortunately, requests for such information require [Chadwick's] consent. At this point, it is our understanding that [Chadwick] has not provided such information in the form of written releases.
>
> Federal income tax returns for [Chadwick], from 1993 through current, would be one possible source of information that may reveal assets controlled by [Chadwick] . . . It is our understanding that [Chadwick] did not authorize the release of any additional tax returns.
>
> . . .

> It is our further understanding that a number of attorneys have appeared on behalf of [Chadwick] in various proceedings in state and federal court. [Plaintiff Applegate's counsel] have requested that authorizations addressed to these attorneys and signed by [Chadwick] direct the release of documents relating to billing information showing the payments made by or on behalf of [Chadwick] and the source of the payments, if known. Ostensibly, funds must have been paid for this representation by or on behalf of [Chadwick]. While we believe that this idea has merit by establishing the source of these funds, [Chadwick] has not signed the necessary release forms to allow the production of these records.
>
> . . .
>
> [Chadwick] has not been forthcoming in authorizing the release of certain information that would aid in identifying assets under his control.

[12/6/05 Exh. P-1 at tab 15]

45. The Court finds Master Sereni credible when he testified that Parente Randolph never requested an authorization to obtain records from the bank in Panama to which assets had been traced by Plaintiff. [Tr. I at 48].

46. The Court finds that Parente Randolph failed to interview any third parties in conducting its investigation. [12/6/05 Exh. P-1 at tab 15]. The Court

finds that Parente Randolph only interviewed Defendant Chadwick when a meaningful investigation would have sought facts from third parties, as follows:

a. No one was interviewed at PMG Securities, where approximately Nine Hundred Thousand ($900,000.00) Dollars was deposited. [12/6/05 Exh. P-1 at tab 15].

b. No attempt was made to interview third parties at North American Security Life, Nationwide Life Insurance Company of Skandia Life about the annuity contracts purchased with some of Defendant's funds after they were repatriated from Gibraltar. [12/6/05 Exh. P-1 at tab 15].

47. The Court finds that Master Sereni also relied upon the Intelysis Report in concluding that Defendant Chadwick does not possess or control the secreted assets and that Intelysis relied exclusively on "available" and "not all encompassing" records and reported the ease with which these searches can be defeated by an individual intent on concealing assets. [Tr. I at 63-64; 12/6/05 Exh. P-2].

48. The Court finds Parente Randolph's Report specifically noted that Intelysis' analysis of potential assets held in Defendant Chadwick's name in the United States was performed only using "available records and databases containing public information". [12/6/05 Exh. P-1 at tab 15]. The Court finds that

without Defendant's cooperation, the investigation conducted by Parente Randolph was severely obstructed, as evidenced by the fact that it was limited to information readily available on the computer to anyone and that it was not surprising that their search was futile.

49. The Court finds that Master Sereni erroneously claimed that Intelysis was able to secure confidential account information from foreign banks without authorizations or powers of attorney. [Tr. I at 156-158].

50. The Court finds that during the investigation, information crucial to tracing the monies, although provided by Plaintiff Applegate's counsel to Master Sereni, did not appear to have been communicated to Parente Randolph or Intelysis. The Court finds that Intelysis indicated that they had been unable to locate an account at Banco Mercantil Del Istmo although Plaintiff's counsel had provided a cancelled check to Master Sereni evidencing the account. [12/6/05 Exh. P-I at tab 17].

51. The Court finds that although Master Sereni claimed that Parente Randolph concluded that there was "no indication" that Defendant currently maintains control or has access to the secreted assets, Parente Randolph's Report states only that they have "not seen evidence" to that effect, while acknowledging the severe constraints imposed by Defendant Chadwick's lack of cooperation. [12/6/05 Exh. P-1 at tab 15].

52. The Court finds that Parente Randolph limited its search to publicly available evidence in a case where the very issue is whether assets have been concealed.

53. The Court finds that although Master Sereni testified that he was aware that Defendant Chadwick had a bank account in Delaware, no such account was reflected in his Report. [Tr. I at 129; 12/6/05 Exh. P-1 at tab 15].

54. The Court finds that Intelysis and Parente Randolph failed to locate a single account in Defendant Chadwick's name. [Tr. I at 130-131].

55. The Court finds that Master Sereni was specifically informed by Intelysis and Parente Randolph that assets could be held under different names. [Tr. I at 139].

56. The Court finds that Intelysis and Parente Randolph did not conclude that no assets exist, and Master Sereni was specifically informed that their inability to locate an account in Defendant Chadwick's name does not mean that assets do not exist. [Tr. I at 132, 140].

57. The Court finds that notwithstanding their investigations, Master Sereni and Parente Randolph failed to locate a bank account in Defendant Chadwick's name maintained in Wilmington, Delaware. [12/6/05 Exh. P-1 at tab 15].

58. The Court finds that the deficiencies evident on the face of Intelysis' and Parente Randolph's

Reports render them too incomplete and unreliable to form the basis for any conclusions in this case and that said Reports were unreasonably relied upon by Master Sereni.

59. The Court finds that Master Sereni also unreasonably asserted that Defendant Chadwick was "credible". [Tr. I at 58].

60. The Court finds that Master Sereni failed to consider the possibility that Defendant Chadwick would lie. [Tr. I at 119].

61. The Court finds that Defendant Chadwick's Petition for Writ of Habeas Corpus is based entirely on Master Sereni's Report.

62. The Court finds that Defendant Chadwick did not testify at the within hearing and offered no other testimony in support of his Petition for Habeas Corpus. [Tr. II at 4].

63. The Court makes no findings concerning the testimony of Carl Fernandes or correspondence addressed to Defendant Chadwick from Carl Fernandes that was delivered to George W. Hill Correctional Facility in that same are unnecessary in view of the Court's within Findings concerning Master Sereni's Report.

Conclusions of Law

1. The Court concludes that Master Sereni far exceeded the scope of his authority under this Court's

Order of April 8, 2004 in making any findings whatsoever regarding the propriety of Defendant Chadwick's continued incarceration, where Master Sereni was appointed for the sole and limited purpose of tracing the funds that Defendant transferred out of the United States in February, 1993.

2. The Court concludes that Master Sereni further exceeded his authority in making any determinations regarding Defendant Chadwick's credibility. [Tr. I at 58].

3. The Court concludes that Master Sereni clearly exceeded the scope of his role in his case and had no authority to assert as follows:

a. that Defendant does not have the ability to comply with the conditions set by the Court to purge himself of contempt;

b. that Defendant's present incarceration serves no lawful or practical purpose in the enforcement of the original Court Order;

c. that Defendant's present incarceration has, in effect, become a life zsentence without the benefit and protections of the basic constitutional protections afforded citizens accused of more heinous acts; and

d. to recommend that Defendant be released from his present incarceration.

4. The Court concludes that Defendant Chadwick's lack of cooperation undermined the entire investigation, invalidating any conclusions or recommendations as set forth in Master Sereni's Report.

5. The Court further concludes that Defendant specifically undermined the investigation by refusing to a) sign documents which would have given access to his previously filed tax returns; b) provide any documents which would give access to the financial institutions where Plaintiff's counsel had been able to locate accounts in Defendant's name some years ago; and c) sign any authorizations which would allow release by his former attorneys of record information relating to payments by Defendant or on his behalf identifying the amount or source of payment.

6. The Court concludes that the law of the case doctrine "refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter"; departure from the law of the case doctrine is allowed only in "exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed." *Cmwlth. v. Starr,* 664 A.2d 1326 (Pa. 1995).

7. The Court concludes that the law of the case doctrine is applicable herein as established throughout the past eleven (11) years of litigation and explicitly stated in the December 30, 2003 Order issued by Judge Kelly and the Findings of Fact, Conclusions of Law and Equitable Distribution Order issued by Judge Kenney on October 27, 2004, and is applicable to all subsequent proceedings herein, including the instant matter. [12/6/05 Exh. P-1 at tabs 7, 11].

8. The Court concludes that there are no exceptional circumstances warranting departure from the principle of the law of the case herein in that Master Sereni's Report fails to amount to new evidence. The Court concludes that the standard as set forth in *Cmwlth. v. Starr, supra,* is applicable herein, i.e., "a substantial change in the facts or evidence giving rise to the dispute in the matter".

9. The Court further concludes that Defendant Chadwick failed to meet his burden of producing evidence sufficient to overcome the established law of this case; that is, Defendant failed to demonstrate any change whatsoever in the facts or evidence of the case.

10. The Court concludes that Master Sereni's Report does not establish new evidence or new facts beyond what has already been litigated in this case. The Court concludes that Master Sereni's investigation failed to trace the secreted funds even one step beyond where Plaintiff Applegate's counsel had

already been able to trace them. [Tr. 136-138, 140-141, 147-148, 157].

11. The Court concludes that the law of the case in no way restricted Master Sereni's investigation.

12. The Court concludes that Defendant Chadwick's explanation regarding the transfer of the assets subject to the July 22, 1994 Order is implausible and not worthy of belief, as determined by the various Courts and Judges who have carefully considered the matter during the eleven (11) years. [12/6/05 Exh. P-1 at tabs 7, 11].

13. The Court further concludes that Defendant Chadwick has at all times material hereto maintained control of the secreted assets and, therefore, continues to have the present ability to comply with the Order to return the secreted funds and purge himself of the contempt for which he is incarcerated.

14. The Court concludes that there exists no new evidence in the case at bar to warrant departure from the well-established law of the case and Defendant Chadwick presented no evidence warranting habeas corpus relief.

15. Accordingly, it is hereby ORDERED that the Report of Special Master Sereni is STRICKEN in its entirety and the Petition of H. Beatty Chadwick for Writ of Habeas Corpus is DENIED.

BY THE COURT:

/s/ [Illegible]
KENNETH A. CLOUSE, P.J.

/s/ [Illegible]
FRANK T. HAZEL, J.

/s/ Chad F. Kenney
CHAD F. KENNEY, J.

EXHIBIT H

IN THE COURT OR COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

H. BEATTY CHADWICK	:	**NO. MD#1979-06**
v.	:	
	:	
RONALD NARDOLILLO,	:	
Warden George W. Hill	:	
Correctional Facility	:	

ORDER

AND NOW, this 20th day of November, 2006, upon consideration of H. Beatty Chadwick's Petition for Writ of Habeas Corpus and Response of Intervenor Barbara Applegate thereto, it is hereby ORDERED that said Petition is DENIED, the Court concluding that Petitioner Chadwick raised virtually identical arguments in an Emergency Petition for Special Relief filed in *Barbara Jean Crowther Chadwick v. H. Beatty Chadwick,* Civil Action No. 92-19535, and that this Court denied said Petition by Order dated May 16, 2005; the Superior Court quashed an appeal of said May 16, 2005 Order by Order dated November 9, 2005 [No. 1384 EDA 2005]. In its May 16, 2005 Order, this Court concluded as follows:

a. The Orders of July 22, 1994 and November 2, 1994 resulting in Mr. Chadwick's incarceration continue to be in full force and effect;

b. The Order entered on October 27, 2004 directing the distribution of the marital property is independent of the Court's prior determinations;

c. Mr. Chadwick's continued contempt was not addressed or rendered moot by the entry of the October 27, 2004 Order;

d. On January 28, 2005, the Superior Court entered an Order granting Mrs. Applegate's Motion to Quash Appeal, the sole basis of which was that under Pennsylvania law, where a party is in violation of a trial court order and the contempt is flagrant, an appeal should be denied or quashed;

e. The purpose of the Orders which directed Mr. Chadwick, among other things, to return the $2.5 million dollars as well as an Order finding him in contempt for failing to do so continue, as Mr. Chadwick continues to be in contempt of the Order to return the secreted funds; and

f. The Pennsylvania Courts have the inherent ability to coerce compliance with their orders; therefore, there is no time limit on how long Mr. Chadwick may be held provided that the Court still finds that he can comply with the Orders; Mr. Chadwick has established nothing which would lead to any change in that determination; and Mr. Chadwick has failed to produce any evidence of what happened to the money of which the Courts have found he still has control.

The Court further concludes that Petitioner Chadwick raised virtually identical arguments concerning Master Sereni's report in a Petition for Writ of Habeas Corpus also filed in *Barbara Jean Crowther Chadwick v. H. Beatty Chadwick,* Civil Action No, 92-19535, and after a hearing, this Court entered an Order dated February 22, 2006, including Findings of Fact and Conclusions of Law, and ordered therein that Master Sereni's report be stricken in its entirety and denied said Petition; the Superior Court quashed an appeal of said February 22, 2006 Order by Order dated July 7, 2006 [637 EDA 2006].[1]

BY THE COURT,

/s/ Kenneth A. Clouse
KENNETH A. CLOUSE, P.J.

[1] Petitioner Chadwick subsequently filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, which is currently pending.

EXHIBIT I

IN THE COURT OR COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW

H. BEATTY CHADWICK **Petitioner** **V.** **RONALD NARDOLILLO, Warden George W. Hill Correctional Facility,** **Respondent**	**M.D. NO. 504-07**

DECISION

(Filed Jan. 14, 2008)

Presently before the Court for determination is Petitioner's Petition for Writ of Habeas Corpus. Following an evidentiary hearing and oral argument on said Petition, we enter the following:

FINDING OF FACT

1. Petitioner filed the instant Petition for Writ of Habeas Corpus on February 27, 2007.

2. Petitioner's Petition asks that an independent impartial judge hear his petition so that "a fresh look by a different pair of eyes" can be made of the probable effectiveness of his continued confinement in bringing about compliance with this Court's Orders of July 22, 1994 and November 2, 1994.

3. An evidentiary hearing on Petitioner's Petition was held before an en banc panel of this Court on December 14, 2007.

4. Petitioner was afforded an opportunity to testify in support of his petition, but chose not to do so.

5. Petitioner was afforded a full and complete opportunity to present any testimony or evidence in support of his Petition, but no testimony or evidence was offered on his behalf.

6. The instant petition is the latest of approximately fourteen (14) habeas corpus and similar petitions filed in this court by petitioner since the time of Petitioner's incarceration. In addition, he has filed eleven (11) petitions or appeals with the Pennsylvania Superior Court; had twelve (12) proceedings with the Pennsylvania Supreme Court; seven (7) proceedings with United States District Court; four (4) proceedings before the United States Third Circuit Court of Appeals, and two (2) proceedings before the United States Supreme Court.

7. Prior to the instant proceeding, seven (7) different members of the Delaware County Court of Common Pleas have reviewed and heard various petitions by the Petitioner.

8. Petitioner failed to present any evidence whatever that any facts or circumstances had changed since the denial of his most recent Petition for Writ of Habeas Corpus on November 26, 2006

which would impact on the effectiveness of his continued confinement in bringing about compliance with this Court's Orders.

9. The purpose of this Court's Orders of July 22, 1994 and November 2, 1994 continues to have effect.

10. The sum of money involved in this matter, namely 2.5 million dollars at the time of the Court's original Orders, and now estimated to be approximately 8 to 9 million dollars, constitutes a significant motive which outweighs any inference that the mere passage of time has negated the effectiveness of Petitioner's continued confinement as a means to obtain his ultimate compliance with this Court's Orders.

11. No evidence was presented to show Petitioner's inability to comply with the Court's Orders.

DISCUSSION

A petition for Writ of Habeas Corpus lies to correct or void illegal sentences or an illegal detention. *CHADWICK V. CAULFIELD,* Pa. Super-, 834 Azd 562 (2003); appeal denied 578 Pa. 704, 853 Azd 359 (2004); cert. Denied 543 U.S. 875, 125 S. Ct. 102, 160 L. Ed 2d 126 (2004). It is a civil remedy that tests the legality of a detention and it constitutes a collateral attack on the process or judgment constituting the basis of detention. *Id*

In the instant case, Petitioner has filed the latest in a continuing series of Petitions for Writ of Habeas

Corpus. In this Petition, Petitioner seeks to have a fresh set of eyes review the propriety of his continued incarceration for civil contempt of this Court's Order directing him to produce certain funds in conjunction with a divorce action. Petitioner was afforded an opportunity to have his Petition heard by an en banc panel of this court and was free to present whatever evidence he had in support of his position. However, Petitioner presented no evidence but instead argued that the mere passage of time had itself established the ineffectiveness of his continued incarceration in bringing about compliance with this Court's Orders. In support of his position, Petitioner relies upon the case of *ARMSTRONG V. GUCCIONE,* 470 F.3d 89 (2nd Cir., 2006). A careful reading of *ARMSTRONG,* however, establishes that it offers no support for Petitioner's request for relief.

The Court in *ARMSTRONG* specifically addressed the assertion that simply by the nature of its length, a detention offends the Fifth Amendment, and it rejected the position. The Court, in explaining its conclusion stated the following at page 111:

> . . . Thus, in most cases, after a certain period, the inference that the contemnor is unable to comply becomes overwhelming. Armstrong's case however, is not the ordinary case. Fifteen million dollars is a life-altering amount of money. We think that the value of the concealed property is a significant factor to the extent that it would lead the contemnor to conclude that the risk of continued incarceration is worth the

potential benefit of securing both his freedom and the concealed property.

The Court went on to clearly distinguish between a contemnor who is incapable of complying with a Court's Order and one who simply chooses not to do so. The Court concluded that the failure to recognize this distinction would provide the contemnor who is capable of complying "with a powerful incentive to resist a court's lawful order based on the hope that simple resistance will result in freedom." At page 111, ftn.9.

In the instant case, Petitioner was afforded an opportunity to present evidence as to how circumstances had changed since his last habeas corpus hearing so as to make his continuing confinement ineffective. No testimony or evidence was offered to establish any change in circumstances other than the mere passage of time. However, as in *ARMSTRONG,* the mere passage of time as a factor which may weigh in favor of an inference of inability to comply, is grossly outweighed by the significant monetary sum which lies at the Court's Order to produce.

Petitioner now has been provided with the review that he requested by the latest in a long series of "fresh eyes" to determine whether his continued confinement is proper. Based upon that review, we conclude that the purpose of this Court's Orders which constitute the basis of Petitioner's confinement remain in effect, and that Petitioner's continued

confinement remains effective in seeking his compliance with those Orders.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the Parties and issues presently before it for determination.

2. The purpose of this Court's Orders dated July 22, 1994 and November 2, 1994, which constitute the underlying basis for Petitioner's continued incarceration, continue in effect.

3. No evidence was presented to show the change in any circumstances regarding the effectiveness of Petitioner's continued incarceration in bringing about compliance with the Court's Orders.

4. Any inference of ineffectiveness of Petitioner's continued incarceration created by the mere passage of time is overwhelmingly outweighed by the monetary sum which is the subject of the Court's Orders to produce and the motivation which such a significant monetary amount can create in favor of non-compliance.

5. No evidence was presented to show Petitioner's inability to comply with the Court's Orders.

Wherefore we enter the following:

IN THE COURT OR COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

H. BEATTY CHADWICK **Petitioner** **V.** **RONALD NARDOLILLO, Warden George W. Hill Correctional Facility,** **Respondent**	**M.D. NO. 504-07**

ORDER

And Now, this 14th day of January, 2008, upon consideration of Petitioner's Petition for Writ of Habeas Corpus, and following a hearing on said Petition and review of memoranda of law submitted by the Parties, it is **ORDERED** and **DECREED** that Petitioner's Petition shall be and the same hereby is **DENIED**.

BY THE COURT,

/s/ Edward J. Zetusky, Jr.
Edward J. Zetusky, Jr., S.J.

/s/ Kenneth A. Clouse
Kenneth A. Clouse, J.

/s/ Chad F. Kenney
Chad F. Kenney, J.